

Rolf Hechler
Mayor

Amanda Forrister
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



Destiny Mitchell
Commissioner

Ingo Hoeppe
Commissioner

Angie Gonzales
City Manager

505 Sims St.
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REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, JANUARY 24, 2024; TO START AT 9:00 A.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 Hoeppe, Commissioner

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

C. PUBLIC COMMENT (3 Minute Rule Applies)

D. REPORTS

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

E. CONSENT CALENDAR

1. City Commission Regular Minutes, January 3, 2024
2. Acknowledge Regular Public Arts Board Minutes, October 17, 2023

F. PUBLIC HEARINGS (5 Minute Rule Applies)

1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 762 TDS Franchise Agreement. Assistant City Manager Alvarez

G. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 31 23/24 Budget Adjustment Request. Assistant City Manager Alvarez

H. NEW BUSINESS

1. Discussion/Action: Authorizing Code Enforcement Officer Tyler Knull as designated representative to act on behalf of the City Manager and Designated Zoning Official for enforcement of the Municipal Code for Property and Building Violations and Appoint Tyler Knull as a Deputy of the T or C Fire Department for Fire Inspections. Assistant City Manager Alvarez
2. Discussion/Update: Animal Shelter Expansion. Tara Manning, Animal Shelter Supervisor
3. Discussion/Action: Board of Veterinary Medicine Animal Care and Facility Fund Grant Recipient Agreement. Tara Manning, Animal Shelter Supervisor
4. Discussion/Action: Submission of a Concept Proposal and Grant Application to USDA RISE Grant by Sierra County Business Center Training Division in partnership with the City of Truth or Consequences. Melanie Feldkamp/Assistant City Manager Alvarez
5. Discussion/Update: PD Update. Chief of Police Tavizon
6. Discussion/Action: Approval of the Grant Agreement between the New Mexico Department of Transportation and the City of Truth or Consequences Police Department. Chief of Police Tavizon
7. Discussion/Action: Approval of Purchase Requisitions over \$20,000. Assistant City Manager Alvarez
8. Discussion/Action: State of NM Dept. of Economic Development Capital Appropriation Grant Agreement MainStreet Foch Street Project. Assistant City Manager Alvarez
9. Discussion/Action: USDA WSPI-1 (Water System Project Improvements PER 1) Construction Loan Offers. Assistant City Manager Alvarez
10. Discussion/Action: City of Truth or Consequences City Building (297 W. 3rd Ave) Tenant Lease Agreement. City Manager Gonzales
11. Discussion/Action: Flood Commission Project Funding. City Manager Gonzales
12. Discussion/Update: Legislative Priorities for Our Representatives and Senators. City Manager Gonzales
13. Discussion/Action: Discussion regarding the Sale of the City's Electric infrastructure. City Manager Gonzales
14. Discussion/Action: Consideration to rescind the action of the City Commission in approving Ordinance No. 756 authorizing issuance and sale of \$4,500,000 City of Truth or Consequences Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023 for the purpose of acquiring, constructing, furnishing, equipping, beautifying, and making improvements to a Law Enforcement Facility. City Attorney Rubin
15. Discussion/Action: Consideration to repeal Special Referendum Election Resolution No. 29 23/24. City Attorney Rubin
16. Discussion/Update: Update on city website redesign. City Clerk Torres

I. EXECUTIVE SESSION

1. Limited Personnel Matters (Water/Wastewater) Pursuant to 10-15-1(H.2).

J. ADJOURNMENT

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

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

NEXT REGULAR CITY COMMISSION MEETING FEBRUARY 14, 2024



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: E.1

SUBJECT: City Commission Regular Minutes, January 3, 2024
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: January 18, 2024
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

Minutes approval.

Recommendation:

Approve the minutes.

Attachments:

- CC Minutes

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-24-24

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, JANUARY 3, 2024

A. CALL TO ORDER:

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

B. INTRODUCTION:

1. ROLL CALL:

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

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

Also Present: Angie Gonzales, City Manager
Traci Alvarez, Assistant City Manager
Jay Rubin, City Attorney
Angela A. Torres, City Clerk-Treasurer
Arnie Castaneda, Water/Wastewater Director
OJ Hechler, Community Services Director
Luis Tavizon, Chief of Police
Tyler Knull, Animal Control/Code Enforcement
Jamie Sweeney, Code Enforcement/Police Officer

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

2. SILENT MEDITATION:

Mayor Forrister called for fifteen seconds of silent meditation.

3. PLEDGE OF ALLEGIANCE:

Mayor Pro-Tem Hechler called for Commissioner Mitchell to lead the Pledge of Allegiance.

City Attorney Rubin reviewed the purpose of preparing the agenda and the process of approving it to newly elected official Hoepfner due to this being his first meeting. He also explained that item H1 is an appeal, which will be done through the Battershell process and will include witness testimony.

4. APPROVAL OF AGENDA:

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

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

City Attorney Rubin read state statute 3-14-10 "At the first meeting of the new commission after each election, or as soon thereafter as practical, the commissioners shall select one of their number as mayor to act for two years, or until a successor is selected and qualified, unless sooner removed by death, resignation, or removal from office. The mayor shall preside at all meetings of the commission and perform other duties, consistent with his office, as imposed by the commission. The mayor has all powers and duties of a commissioner, including the right to vote upon all questions considered by the commission. He is the official head of the municipality for all ceremonial purposes, for the purpose of civil process and for military purposes. During his absence or disability, his duties shall be performed by another member of the commission, appointed by a majority of the commission and designated as Mayor Pro-Tem." We just had a new election so that is why this item is on the agenda.

Mayor/Commissioner Forrister made a motion to nominate Commissioner Rolf Hechler to serve as Mayor. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

Newly appointed Mayor Hechler took over the meeting at this point of the meeting.

Mayor Hechler/Commissioner made a motion to nominate Amanda Forrister to serve as Mayor Pro-Tem. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

**Hon. Rolf Hechler, Mayor Pro-Tem voted aye
Hon. Destiny Mitchell, Commissioner voted aye
Hon. Merry Jo Fahl, Commissioner voted aye
Hon. Ingo Hoeppner, Commissioner voted nay
Hon. Amanda Forrister, Mayor voted aye**

C. PRESENTATIONS:

1. Presentation of City of Truth or Consequences Employee Service Anniversary Awards:

City Manager Gonzales presented an Employee Service Anniversary Award to Tammy Gardner for 7 years of service with the City of Truth or Consequences.

City Manager Gonzales and OJ Hechler presented an Employee Service Anniversary Award to Tara Manning for 4 years of service with the City of Truth or Consequences.

City Manager Gonzales presented an Employee Service Anniversary Award on behalf of Kerin Salcedo for 16 years of service with the City of Truth or Consequences.

City Manager Gonzales presented an Employee Service Anniversary Award on behalf of Henry Flores for 4 years of service with the City of Truth or Consequences.

City Manager Gonzales presented an Employee Service Anniversary Award on behalf of Isaiah Mallard for 1 year of service with the City of Truth or Consequences.

City Manager Gonzales presented an Employee Service Anniversary Award on behalf of Mathew Hill for 2 years of service with the City of Truth or Consequences.

City Manager Gonzales presented an Employee Service Anniversary Award on behalf of Shantell Gonzales for 2 years of service with the City of Truth or Consequences.

City Manager Gonzales presented an Employee Service Anniversary Award on behalf of Joshua Breuer for 2 years of service with the City of Truth or Consequences.

D. PUBLIC COMMENT (3 Minute Rule Applies):

Ron Fenn submitted public comment to City Clerk Torres. (Comments attached hereto and made a part hereof).

E. REPORTS:

City Manager Gonzales reported the following:

- Everything was quiet, due to the holidays.
- I spent a few hours with newly elected official Hoeppner, and I am looking forward to working with him.

City Attorney Rubin reported the following:

- He had some recent success with a couple of lien foreclosures. As we know, there were instances where there were delinquent utility bills, and the procedure has been to prepare and record liens on the property, which would then act as a lien for foreclosure in the event that we would need to. There were two cases that he had to file a foreclosure action, and with both cases he was able to work out a resolution with the property owners, and the city was able to get some compensation, and we were able to dismiss the lawsuit.

City Commission Reports:

Commissioner Mitchell reported the following:

- She gave a shout out to the Turtle Ascension organization who put on a successful event on New Years Eve. She also thanked the Chamber of Commerce, as well as the community for all of the hard work they put into making that event successful.
- She thanked all of the city employees for keeping the city functioning over the holidays.

Commissioner Fahl reported the following:

- She thanked the city staff. Especially the staff who put up the Christmas lights. The lights bring a lot of joy, so please leave them up as long as possible.

Commissioner Hoepfner reported the following:

- This is his first meeting, and he is excited to be here. He thanked those who put the trust in him to do the right things and help keep the city going and moving forward. It is exciting, and he is happy to serve the community. Together we can make a difference.

Mayor Pro-Tem Forrester reported the following:

- Happy New Year to everyone. She welcomed our new Commissioner. We all come in wanting to do better for our city. That is the ultimate goal. She congratulated Commissioner Hechler for becoming our new Mayor. He will do a fabulous job.
- She gave a shout out to Chad at the Airport. Her husband went out there to get some fuel; he had been out there a couple of times, and he said that Chad is always out there cleaning the runways in freezing cold weather. He is always out there busting his butt to keep the runways clean.
- She gave kudos to Chief of Police Tavizon and his team. She knows that they probably had a rough couple of days with all of the recent incidents that have occurred. Some of which happened on her street. She thanked them for keeping her in the loop because sometimes it is nerve racking when you see lots of stuff going on down your street, but Chief was able to assure her that everything was good. She also thanked them for working and busting their butts on holidays. They are truly appreciated.

Mayor Hechler reported the following:

- He attended the Veterans Administration ribbon cutting on December 14, 2023. He was very surprised to see the Governor there, but then again this was her baby. It is a \$60 million dollar build that we had at the Veterans Administration. It is a wonderful addition to our community. He wanted to spend some time with the Governor, so when he figured out the direction she was coming, he stood in front of the door, and he wouldn't move. He got to spend about 5 minutes with the Governor, talking about the community. He is hoping to get some facetime with her when we go to Santa Fe this year. Hopefully she will remember who I am. He appreciates that she came down here to see us. He knows that she is going to stay focused on the Veterans Administration, and the area down here. I think there is going to be a veterans committee down the road to facilitate the Veterans Administration Facility, so I look forward to possibly serving on that committee down the road if the opportunity presents itself.
- There was a meeting at the Sierra Vista Hospital and the Veterans Administration hierarchy, and what we were interested in was developing a collaboration between the Veterans Administration and Sierra Vista Hospital. There is no use in sending patients outside of our community if we have the facilities here. He and the Mayor of Elephant Butte attended the meeting, and they met with the CEO and the CEO of the Veterans Administration. They are planning on entering into a couple of contracts down the road to test the water and see how things go, and hopefully that collaboration will transform itself into some dollars for our community, because that is what we were after.
- On December 19th he had a follow up meeting with the Municipal Court Judge regarding the transition to the Magistrate Court and that is moving right along. The city will keep one of the Municipal Court employees in transition for a period of time while we transfer the books, archive the information, and do the transition to the Magistrate Court. Hopefully that will work out over the next few months, and because Margaret is a great employee, it will possibly work out in her benefit to become a permanent member of the city down the road. Anytime we have good members that work for our city, we try to keep them if we can because they are few and hard to find.
- On the January 24th meeting, he challenges his fellow Commissioners to re-visit the reason that they are Commissioners, what their platforms were, what they want to do for our community, and he would like to hear during their reports at the next meeting what they want to be focused on for the next two years. He thinks it is important to get those things committed to paper. He thinks those things should be used to formulate our agendas down the road, so we know what we need to be focused on. He has 7 or 8 things that he wants to present and talk about, but he knows that everyone has their own agendas so he would like to hear about those as well. We were elected for a reason, so lets dig up what those reasons were, and lets re-visit those things, and try to get those things accomplished.

F. CONSENT CALENDAR:

- 1. City Commission Regular Minutes, December 13, 2023**
- 2. Accounts Payable, December 2023**

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

G. ORDINANCES/RESOLUTIONS/ZONING:

- 1. Discussion/Action: Resolution No. 28 23/24 Budget Adjustment Request.**

Assistant City Manager Alvarez presented the Budget Adjustment Request provided in the packet.

Commissioner Mitchell moved to approve Resolution No. 28 23/24 Budget Adjustment Request. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

- 2. Discussion/Action: Resolution No. 29 23/24 Approval of Special Election Proclamation/Resolution.**

City Clerk Torres: A Referendum Petition was submitted against Ordinance No. 756. As per NM State Statute Section 3-14-17 upon verification of a referendum petition, the commission shall adopt a resolution calling for the holding of a special election on the measure. The number of signatures required for the petition was 209. After verification of the petition, it was determined that there were 241 valid signatures on the petition which exceeded the number required for an election. The date of the Special Election is scheduled for March 19, 2024, and the election will be held via mail ballot only by the Sierra County Clerk.

Commissioner Michell moved to approve Resolution No. 29 23/24 approval of Special Election Proclamation/Resolution. Commissioner Hoeppner seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

- 3. Discussion/Action: Resolution No. 30 23/24 Foch Street Renovation Project.**

Assistant City Manager Alvarez: Economic Development has allocated some more funding to the Foch Street Project. As part of their process, they require a resolution of support from the Commission. The award letter from Economic Development and the

Foch Street design conceptual plan is included in the packet. It is 100% complete in design, and there is no cash match on this award.

Commissioner Fahl moved to approve Resolution No. 30 23/24 Foch Street Renovation Project. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Amendment to Holiday Resolution No. 16 23/24.

City Clerk Torres: An amendment to the 2024 city holiday schedule was made on November 15, 2023 amending the dates on Christmas Day. After the November 15th meeting, it was discovered that the portion of the holiday schedule that says "Holidays are paid at 8 or 4 hrs. time and a half if worked and straight 8 or 4 hrs. if not working" is against our city policy. Therefore, we are removing that language from the resolution, and we ask for your approval of the amended resolution.

Mayor Pro-Tem Forrister moved to approve the amendment to Holiday Resolution No. 16 23/24. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

H. NEW BUSINESS:

1. Discussion/Action: Bibiana Gower Appeal of Resolution No. 25 23/24 and Resolution No. 26 23/24.

City Attorney Rubin: We are here today on the basis of Resolution No. 25 23/24 and Resolution No. 26 23/24 that were passed at the last meeting in reference to 709 Broad Street. One resolution dealt with the fact that there was an accumulation of rubbish, wreckage, litter, junk etc. on the property, and the other resolution dealt with the fact that there was a dangerous building which we are seeking to have removed. The Commission approved both of the resolutions pursuant to the resolution itself, our city code and state statute, Ms. Gower was served with the resolutions, and she had the opportunity to file an objection with the City Clerk's Office, which she has done. The objection is the email that is included in your packet. Ordinarily, when you have a situation that deals with somebody's property rights, I will advocate that you follow what is formally known as the Battershell process, which is a semi-formal approach to a situation where the city presents their case, everybody testifies under oath, and then the property owner is given the opportunity to testify and call on any witnesses they wish to have testify. In Ms. Gower's email she said that she has objections, but she did not specify what the objections were. I had the pleasure of meeting with Ms. Gower for a few minutes before the meeting started, and the objection may not be a factual thing, I think it may have to do with a procedural or time frame thing. So, with that being said, we may want to hear from Ms. Gower first, and she can maybe explain to us what her objection is, and then we can maybe go from there.

Mayor Hechler: I am going to deviate from that slightly. I would like to first hear what the complaint is, and give Ms. Sweeney the chance to explain the violations, and then we can go from there.

City Clerk Torres administered the Oath to Bibiana Gower, Code Enforcement Officer Jamie Sweeney (via telephone), Tyler Knull, Animal Control Officer/Code Enforcement, and Traci Alvarez, Assistant City Manager.

City staff testimony:

Jamie Sweeney, Code Enforcement Officer: I was made aware of this property back in January or February of last year. I received a call from Assistant City Manager Alvarez about the property because there were some concerns about it. I went over there, and I immediately noticed that it was full of junk vehicles, it had some weeds, and there was trash thrown everywhere. The outside of the house was in pretty bad shape. The outside structure of the house wasn't so much. I did notice that some windows were boarded up, so I started banging on the door and announcing that I was there, and I heard a voice from inside there. I was made aware that nobody was supposed to be there so I immediately backed up and I notified law enforcement to go there. While I was waiting, an individual I knew through previous experiences came outside, and then law enforcement showed up. I guess the individual had broken into the house. He did not have permission to be there so while we did that, we cleared the rest of the residence to make sure that nobody else was in there, and I could immediately tell from the inside of the house that it was completely trashed. The previous owner seemed to be a hoarder and there were all kinds of things in there. So, from that, I immediately knew right then from February that there were violations. At that time, I believe I spoke to Ms. Gower on the phone, and I explained that there were some violations. I didn't send a letter. I didn't do anything. I just explained that there were some violations there. So, fast forward, I want to say it was in July (*Tyler can verify the date*) that I officially sent the letter that I send to everybody. I sent the letter because I went back up there and there wasn't too much progress being done on the property. I then went and officially sent the certified letter that I send to every person who has a violation, that explains the violations and I believe it included the dangerous structure. I then had contact with Ms. Gower and I explained the violation. She explained her situation. She explained that I believe it was her father who owned the property. He was a hoarder, and he had a bunch of stuff there. I explained to her that I would work with her, as long as she is making progress. As long as they are moving the stuff at a steady space and they are cleaning it out, I am willing to work with them. Then fast forward to September, I went back up there and I took pictures, the property was still in pretty bad shape. I then immediately noticed that there was stuff moved, but it wasn't a lot. I wasn't getting updated photos or any of that, so we then decided to send it over to Planning & Zoning. Then there was a little bit of communication between me and Ms. Gower. She had sent me a picture of a truck or trailer where she moved some stuff off the property, and then she explained that she had 6 vehicles moved off of the property at that time. This property is massive. It sits off from the side and you wouldn't even know it was there. I

didn't even know it was there. My officers didn't even know where it was when I called it out. That's how far off it sits, and the problem is that we've had a few reports of stuff happening there, including somebody breaking into the house. Due to where it is located, it invites vagrants because you can tell nobody lives there, and there is a large amount of junk in the yard. Animal Control Officer Knull was there as a witness when I spoke to Ms. Gower, and she was really upset about everything. She said it was unrealistic of me to expect for her to move all the stuff off of the property, and I explained again to her that it wasn't being done in the amount of time that was given to her, and she explained that she did have a life, and she has other priorities. She doesn't live here, and it is not a property that she is at quite often. It is still in pretty bad shape. Yes, there has been stuff moved off of it, and it has been cleaned, but it is almost going on a year from the first correspondence conversation that I had with her. I didn't officially send the letter until July, but 6 months is quite a bit of amount of time to get the property cleaned if you are consistent. The reason why we decided to turn it over to the Commission was because somebody was complaining about the property.

Tyler Knull, Animal Control Officer/Code Enforcement: I was with Officer Sweeney when she started this process, and as she stated, she did send out a certified letter on July 11, 2023 informing Ms. Gower of the violations under Sec. 6-72. Declaration of nuisance; Sec. 6-74. Unsanitary premises; Sec. 6-75. Hazardous premises; Sec. 6-77. Storage on private property; Sec. 6-78. Weeds, responsibility of owner; Sec. 6-52. Prohibited motor vehicles; Sec. 4-229. Dangerous structures or premises. She was given 15 days, according to the violation letter. As Officer Sweeney stated, she did turn it over to Planning & Zoning on September 5, 2023 so they could begin their process with it. I will explain the current violations, and what the ordinance says for each violation:

- **Sec. 6-72. Declaration of nuisance:** In the interest of the inhabitants of the City, it is necessary to prohibit the accumulation of junk, trash, solid waste, debris, garbage and refuse on property within the corporate limits of the City by declaring such accumulation a nuisance. Violations of this article are a public Nuisance.
- **Sec. 6-74. Unsanitary premises:** It shall be unlawful for any person to permit in or about his premises trees, weeds, briars, brush, shrubs, machinery, appliances, scrap metal, lumber, logs, pilings, open pits, quarry, cistern, well or other excavation without barriers, or any other waste, rubbish, or debris to become, in any way, hazardous or injurious to public health, to create a fire danger, or to obstruct pedestrian or vehicular traffic.
- **Sec. 6-75. Hazardous premises:** It shall be unlawful for any person to permit in or about his premises trees, weeds, briars, brush, shrubs, machinery, appliances, scrap metal, lumber, logs, pilings, open pits, quarry, cistern, well or other excavation without barriers, or any other waste, rubbish, or debris to become, in any way, hazardous or injurious to public health, to create a fire danger, or to obstruct pedestrian or vehicular traffic.
- **Sec. 6-77. Storage on private property:** It shall be unlawful for any person to leave outside any building or dwelling in the City any dilapidated furniture, appliances, machinery, equipment, building material, junk, or other items which are either wrecked, junked, dismantled or in inoperative condition, and which are not completely enclosed within a building or dwelling, or behind a privacy fence. All fences must be permitted and constructed as provided in chapter 26, land use.

- **Sec. 6-78. Weeds, responsibility of owner:** It shall be unlawful for any owner, agent, lessee, or occupant of any lots, tracts or parcels of land within the City to allow weeds to be planted, lie, grow or be located upon any such property or along any street adjoining the same between the property line and the curb line thereof. Weeds include, but are not limited to (the code lists several variations).
- **Sec. 6-52. Prohibited motor vehicles:** No person shall park, store, leave, or permit the parking, storing or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, junked or partially dismantled condition, whether attended or not, upon any public or private property within the City for a period of time in excess of 72 hours. The presence of an abandoned, wrecked, dismantled, inoperative, junked, or partially dismantled vehicle or parts thereof on private or public property is hereby declared to be a public nuisance which may be abated as such in accordance with the provisions of this article.
- **Sec. 4-229. Dangerous structures or premises:** For the purpose of this Code, any building, structure or premises that have any or all of the conditions or defects described below shall be considered dangerous: (1) Any door which is unsecured or any door, aisle, passageway, stairway or other means of egress, including windows, that does not conform to the current New Mexico Building Code and Fire Code as adopted by the authority having jurisdiction relating to the requirement for existing buildings. (2) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of egress. (3) Any portion of a building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged. (4) Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. (5) Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads required by the New Mexico Building Code. (6) The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way. (7) The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act. (8) Any building or structure has been constructed, exists or is maintained in violation of any specific requirements or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety. (9) A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing

CITY COMMISSION JANUARY 3, 2024 REGULAR MEETING MINUTES

system, or otherwise, is determined by the enforcement officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease. (10) Any portion of a building remaining on a site after a demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such.

Tyler Knull, Animal Control Officer/Code Enforcement went on to say that kind of explains each of the violations. As Officer Sweeney has said, not much has changed. I went by the property today, and I took updated photos. *(Tyler Knull, Animal Control Officer/Code Enforcement provided copies of the photos to the Commission)*. We also have reports that I got from Central Dispatch Call for Service Records for the property. There were 6 different calls for service for that property. 3 were for breaking and entering; 1 was a trespass call; 1 was a burglary call; 1 was a call for theft. In one of the calls for service, the reporting party stated that she had received pictures of the building being stripped for parts. In another one she said that she believed the property was unsafe so on September 17, 2022, she stated to Central Dispatch that she felt that the property was unsafe due to a breaking and entering property being stolen.

Assistant City Manager Alvarez:

Opponent of Resolution No. 25 23/24 and Resolution No. 26 23/24:

Bibiana Gower, property owner of 709 Broad: So, first of all, my objection for Resolution No. 25 23/24 and Resolution No. 26 23/24 is to squash it. I feel that I was only provided a certified letter. I was not provided information for Resolution 26 23/24 correctly. I was sent a certified letter on the 21st of December, and it did not include all of the resolutions.

City Attorney Rubin: Have you been provided a copy since then? Have you had a chance to review them? You called me right after that, and I said that I have the packet for you. Have you seen the resolutions?

Bibiana Gower, property owner of 709 Broad: Yes. You also said that you were going to send them to me certified, because 306 Foch did not have 709 Broad. Going back to Jamie, I did not speak to her any time before July 21, 2023. She was on my property. I have a friend of a friend send a video to me, so if she talked to anyone, she talked to a friend of a friend. I was never given this information. I had called many times over that precinct, and I will get records and send them to your emails. The letter that I got was just for the violation. I did not receive anything prior to that. I have been asking for pictures, and I have been asking for descriptions so I can understand what it is that the City of T or C needs me to do. I have done what I know to do in a matter of 3 months before this got turned over, and those are the pictures in your packet. I apologize because I am nervous and upset. This whole situation is just insane. This is the first time I heard the descriptions. I have still been asking for pictures, and I have been asking for understanding of what the dangerous and hazardous stuff is, and I have never been provided with anything. Since the 21st of December, I have asked for the

CITY COMMISSION JANUARY 3, 2024 REGULAR MEETING MINUTES

IPRA forms to get the actual documents from everybody, because everybody seems to know what is going on, but nobody has been communicating with me on what needs to be done. The time frame between July and October was only 3 months, and what I sent them, she repeated that it was unrealistic, but was unrealistic is the miracle that she is wanting me to do, other than what I have already done within those 3 months. She then read a letter: "Good morning, my name is Bibiana Gower, I am a homeowner of 709 Broad Street. I am here with an objection to Resolution 25 23/24 and 26 23/24. My father has owned that property since 2006, which is approximately 18 years. In 2019, he became ill and stopped tending to his property. Vagrants and thieves have stolen, vandalized, and trashed the property. Everything inside and in storage units was rummaged through and brought outside and was left out all over the property. They have tagged the house, and they have broken windows. My dad and I have been victimized all through his sickness and until his death. He died in 2021 of stage 4 cancer. This is my statement of facts. I was notified by a resident of T or C, a friend of a friend, that the Code Compliance Officer was on my property on January 5th. I have a video of her being there. I never spoke with her, ever, until after July 2023. She spoke to a friend of a friend, and I don't even know that friend's name. I called the precinct number at (575) 894-1204 approximately 15 times, and I left messages between January through May and I have never been given a call back. I will and I can, and I'm going to my mobile place and get those records. At no time have I ever gotten a call back, so I don't even know what violations there were, or what was wrong, other than the people that they pulled out from that property that broke in and did not belong there. On July 20th, I received a certified letter from Jamie that was one page long. It had no explanation of the code violations and there were no pictures. On July 21, 2023, I drove from Rio Rancho to her office to confront her findings. I asked for a couple of months to get started due to our record heat. I asked that she please work with me. She said that she would, and she gave me her phone number, but I feel that she did not work with me. In September and October, we removed approximately 2500 lbs. of trash and debris, and those are the pictures that were provided. 6 vehicles, including boats and RVs that were able to be moved, and many thousands of pounds of metal was removed. Since October 3rd, more vehicles have been removed from the property. That would include 3 more. Everything that is there right now are things that I was unable to get rid of. Nobody will take them, so I have that issue, and I have a question for that at the end of my statement. On October 25th I received another certified letter from the City Attorney. I called Jamie Sweeney on her cell phone and spoke to her for 9 minutes. Yes, I was very upset. I cannot perform a miracle in 3 months, but I did do a lot. I feel that I did a lot. I got 2500 lbs. and hundreds of pounds of metal and vehicles moved. I got that done in 3 months time which I feel is a lot. I had been working on the property, and Jamie advised that she would work with me. I have my Pastor James Washman, and my dad's mechanic to advise differently from what she says, because she states that I did not work on the property, and I did. Those are pictures that you have. I then called the attorney, and he advised that I had until November 15th to respond to him or he would take it to this committee on December 13, 2023. I sent an email on 11/9/23 and I did a follow up call on 11/15/23, and I was advised that I was in good standing. On December 21, 2023 I received a certified letter and Resolution No. 25 23/24. Not Resolution No. 26 23/24. I did not receive any other resolution pertaining to me, but documents pertaining to 306 Foch. This information was not correct. I called the City Attorney, and he advised that this was routine, to submit resolutions. I expressed that I was upset. That is not right. I was told that I was good to continue cleaning the property. Mr. Rubin advised that he would re-send the certified letters with the correct resolution, but he has not done that. On December 21st, I called

CITY COMMISSION JANUARY 3, 2024 REGULAR MEETING MINUTES

the City Clerk to object to the resolution, and request information for public records of pictures and correspondence between the City Manager, City Attorney and Code Compliance Office, through the Inspection of Public Records Act. I still as of December 21st do not know what the violation is. I do not know what hazardous materials are there and I do not know what dangers are on the property other than weeds, which I understand. Storage, I understand. Unsanitary premises I just assume is all of the trash and debris which I hauled 2500 lbs. You can see pictures of the dump truck that I had. On December 22nd, I was informed by the City Clerk that I would receive documents on January 8th. However, I did receive some pictures from Jamie and that is what you have on file. In conclusion, I was told by two different officials that they would work with me and I feel that they did not. It is upsetting that within 6 months of being a homeowner at 709 Broad Street is going before the committee. The Resolutions kind of dictate what is going to happen to my property. I have been working with you guys and I feel that this has gone too far for such a short period. I haven't been given enough time to work on these things. I expect our City Code Compliance Officer and City Attorney to be fair, and to be just, but I don't feel that is very realistic. I have had 9 vehicles and 2500 lbs. of trash and debris removed, and hundreds of pounds of metal that has been destroyed. Moving forward, I am asking the City of Truth or Consequences to squash Resolution 25 23/24 and Resolution 26 23/24 and to work with me as a homeowner to continue cleaning the property to be up to standard."

I am asking for an explanation of what is dangerous and hazardous on the property, and will you work with me if I can get that part taken care of immediately. It is almost impossible to get rid of those trailers that are destroyed. Nobody wants the RV's and the boats that are on the property, and I can't take them to the dump. The only way to get rid of this stuff is to take it to Las Cruces as far as I know, and I will need tires, and I will need to pay somebody to haul them long distance, and I will need to pay somebody to take it and tear it apart. That is a lot of work, and it is not something that I am able to do.

Mayor Pro-Tem Forrister: The house in general is the dangerous structure because the windows are boarded up and there are vagrants that are going in there and living in there and that is what they have to respond to, and that is what makes that structure dangerous.

Bibiana Gower, property owner of 709 Broad: I can get a statement from my pastor. He has changed the locks many times, and he has also changed the doors. They keep breaking everything. I have metal doors, and they break through the metal screen. They have also broken all of the windows so took all of the windows out and we boarded it. As far as I know, that is not a crime to have boards on your windows. That happens when storms happen. People keep on breaking in there. I do need to deal with this. I do need to put in lights, and I need to put cameras up, but I am not able to do that right at this moment. I would like to squash the resolutions.

Mayor Hechler: I think the resolutions have to stand. However, I think this body is going to try to work with you within reason. The letter we have here is dated for July 11, 2023, so that was your official certified notice that we had an issue there. I visited the property yesterday, and what you have is an attractive nuisance, and it is inviting vagrants, and it is inviting homeless folks to come up there to it because of the way it looks. It looks

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abandoned, and it looks like it is in need of some attention, and because of that it creates some problems, and it creates problems for our community and that is why we need to have this thing rectified. Does anybody have any idea of what to do with abandoned motor homes or abandoned vehicles. Is there a way to deal with these things or do you have any suggestions.

Assistant City Manager Alvarez: I've seen where people have advertised where they are willing to pick up vehicles or motor homes for scrap metal.

Mayor Pro-Tem Forrister: I think Reeds Tire does that, and if not, I think he can steer you in the right direction.

Bibiana Gower, property owner of 709 Broad: I have been told that a lot of people will not mess with RV's because the majority of the trailer is insulation. They will take the metal frame, but I have to be the one to get that down to the metal frame for people to take, and I don't know how to do that.

Assistant City Manager Alvarez: We do have some local contractors that we have hired to abate properties. They have the equipment and the ability to do so.

Mayor Hechler: Would you ask Ms. Sweeney and Mr. Knull to give her some information or a point of contact so we can try to get some help for this lady. The other alternative is if you let the city go in and clean it up, they are going to send you a bill. It may be more expensive that way than it would be if you did it.

Bibiana Gower, property owner of 709 Broad: That is why I am objecting the resolution, because you guys are going to send somebody in, and who knows how much they are going to charge me, and if I don't have that, then that is a lien against my house, and that lien is foreclosable so that is not very fair. I am working with what I have to work with, and I have done a tremendous amount of stuff in a short period of time.

Mayor Hechler: What is a reasonable timeframe for you?

Bibiana Gower, property owner of 709 Broad: I am asking for a year to get rid of the stuff. There are at least 10 RV's and trailers that I need to get tires for and find a place for them. I also need to know what the dangerous structure is.

Jamie Sweeney, Code Enforcement Officer: We have a list that we go off of for a dangerous structure, and I've marked several violations. It is not just the trash. There are several things that were marked.

Commissioner Mitchell read the violations that were provided in last month's meeting packet when the resolution was approved.

- Any door which is unsecured or any door, aisle, passageway, stairway, or other means of egress, including windows, that does not conform to the current New Mexico Building

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Code and Fire Code as adopted by the authority having jurisdiction relating to the requirement for existing buildings.

- The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
- The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
- Any building or structure has been constructed, exists or is maintained in violation of any specific requirements or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
- A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the enforcement officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- Any portion of a building remaining on a site after a demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

Mayor Hechler: I would advise a site visit with Ms. Gower and Mr. Knull so he can point out the violations to Ms. Gower, so she is aware of what is being required.

Mayor Hechler made a motion to grant Bibiana Gower an additional 6 months to address the violations, and when the 6 months are up, she can present the progress that she has made and notify the Commission of any obstacles she has encountered. At that time the Commission will decide if they want to grant more time to Ms. Gower. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Appointment of Shennuah Bree Nisly to the Recreation/Golf Course Advisory Board.

City Clerk Torres: The Recreation/Golf Course Advisory Board has 4 vacancies on their board. On December 11, 2023, the board recommended the appointment of Shennuah Bree Nisly to serve a 2-year term on the Recreation/Golf Course Advisory Board. If appointed, she will serve a 2-year term on the board.

Commissioner Fahl moved to appoint Shennuah Bree Nisly to serve as a member on the Recreation/Golf Course Advisory Board. Commissioner Hoepfner seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Appointment of Joseph Ferrell to the Recreation/Golf Course Advisory Board.

City Clerk Torres: The Recreation/Golf Course Advisory Board has 4 vacancies on their board. On December 11, 2023, the board recommended the appointment of Joseph Ferrell to serve a 2-year term on the Recreation/Golf Course Advisory Board. If appointed, he will serve a 2-year term on the board.

Commissioner Fahl moved to appoint Joseph Ferrell to serve as a member on the Recreation/Golf Course Advisory Board. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Sierra County Arts Council Memorial Donation & Gift Agreement.

Jagger "Cary" Gustin, Sierra County Arts Council: I am the Sierra County Arts Council president. The Sierra County Arts Council hopes to give the City of T or C a nature work of art this morning.

Andy Underwood, Sierra County Arts Council: The Sierra County Arts Council is here to seek approval from the city for a sculpture to be placed at the Healing Waters Plaza. We met with the Parks and Recreation Board on the 11th of December to get permission to place the sculpture in the plaza, and it was approved at that meeting by them. The Plec family of T or C left money to the Sierra County Arts Council for public art. It is our hope that the city council will pass this memorial gift by the Plec family and others to be put in the park. We have an artist, Kendra Brock. She will be re-creating one of Carol Plec's sculptures for the park. Her bio is included in the packet that you have. We anticipate that this project will take about a year. We have also contacted an engineer to provide us with an engineer stamp and we will get a building permit with CID to have the structure safely placed.

Mayor Pro-Tem Forrister: I hate to bring this up, but we are experiencing a lot of vandalism right now, and if something happens to the structure, who is going to be responsible for fixing it, maintaining it, and putting it back together.

Andy Underwood, Sierra County Arts Council: It's a gift to the city. We shouldn't stop progress and keeping the city looking good because of vandalism. It is going to be made of steel with all considerations to make it durable and as safe as we can. It should last a long time, and if there is a point to where it becomes inoperable, or unsafe, I would suggest the city get rid of it and we go find something else to put there and we keep moving forward.

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Mayor Hechler: The memorial gift policy states that memorial gifts to the city are considered outright and unrestricted donations, so if there is an issue with the thing down the road, if there is something that can be easily dealt with or fixed, I'm sure the city would take care of it. If it is more than that, we would have to discuss it with the Arts Council and see what the options are.

Commissioner Mitchell moved to approve the Sierra County Arts Council Memorial Donation & Gift Agreement. Commissioner Hoepfner seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Update: Water Update.

Arnie Castaneda, Water/Wastewater Director presented a water leak cost report. (Attached copy attached hereto and made a part hereof).

Arnie Castaneda, Water/Wastewater Director: I recommended to the City Manager that the City Commission pass an ordinance or something that says the Commission should receive a report every 5 years from the department of what the needs are, including the infrastructure, and what needs to be replaced, so we are not back in this situation in the future.

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

City Manager Gonzales reviewed the Purchase Requisitions over \$20,000 provided in the packet.

Commissioner Fahl asked why a new vehicle needs to be purchased at this time. She thinks the money in the budget should be better spent on materials and infrastructure, and not buy anymore vehicles. She feels that we need to make due with what we got until we are past this fiscal year.

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

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

Motion carried with a 4-1 vote.

7. Discussion/Action: Approval of 2023 Regional Recreation Centers/Quality of Life Grant for a Master Plan of the Louis Armijo Sports Complex.

OJ Hechler, Community Services Director: The city received a grant award in the amount of \$48,188 to plan and design the Louis Armijo Sports Complex. As you know, this last year, we removed the BMX track and we did some things with the basketball court, and we made more parking. The complex is located on approximately 28 acres of city property and only a portion of it is currently being utilized. The proposed master plan will evaluate the existing conditions of the sports complex and solicit public input regarding the desired and future use and ideas that may include, updating the existing baseball fields to meet permit guidelines. That is very important. We want to host regionals and we want to get people here. Renovating the soccer field to include a new sprinkler system. We know how important that has been. That has been on our CID for the last 4 or 5 years. A new parking lot to meet current and future demand, and also a jogging/walking trail around the complex. Shade structures over the softball bleachers and a new playground with canopy, volleyball and basketball courts, a cornhole designated area, updated lighting throughout the complex, bathroom renovations and upgrades. That is important because once the entire project is completed, the Louis Armijo Sports Complex will serve as an economic driver in the city attracting other youth sports teams, increasing tourism, and revenue. This also includes a portion of the Rodeo Arena.

Mayor Pro-Tem Forrister moved to approve the 2023 Regional Recreation Centers/Quality of Life Grant for a Master Plan of the Louis Armijo Sports Complex. Commissioner Hoepfner seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

8. Discussion/Action: NMDOT Cooperative Project Agreement for the design Sidewalk Improvements Project Control No. 1102250.

Assistant City Manager Alvarez: The City Commission approved and accepted the grant award on April 12, 2023 in the amount of \$212,910 with a \$181,910 Grant and \$31,000 match. The funding is for the design of sidewalks located on Marie Street from Palo Verde to Date; Pershing Street from Marie to New School; New School to Date; Smith Street from Date to North Silver; and North Silver to 9th Street.

Commissioner Fahl moved to approve the NMDOT Cooperative Project Agreement for the design Sidewalk Improvements Project Control No. 1102250. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

9. Discussion/Action: Appointment of 3 Governing Body Board Members and 1 Alternate Member to serve on the Sierra Vista Hospital Joint Powers Commission (JPC).

Mayor Hechler made a motion to appoint Mayor Hechler, Mayor Pro-Tem Forrister and Commissioner Hoepfner to serve as members on the Sierra Vista Hospital Joint Powers Commission (JPC), and Commissioner Mitchell to serve as the alternate. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

10. Discussion/Action: Appointment of a Governing Body Board Member and an Alternate Board Member to serve on the South-Central Council of Governments Board (SCCOG).

Mayor Hechler made a motion to appoint himself (Mayor Hechler) to serve as a member on the South-Central Council of Governments Board (SCCOG), and Mayor Pro-Tem Forrister and Commissioner Hoepfner to serve as alternates. Mayor Pro-Tem Forrister and Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

11. Discussion/Action: Appointment of a Governing Body Board Member and an Alternate Board Member to serve on the Regional Planning Organization (RPO).

Mayor Pro-Tem Forrister made a motion to appoint Mayor Hechler to serve as a member on the Regional Planning Organization (RPO), and Commissioner Fahl to serve as the alternate. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

12. Discussion/Action: Appointment of a Governing Body Board Member to serve on the Sierra County Recreation & Tourism Advisory Board.

Commissioner Mitchell made a motion to appoint Commissioner Fahl to serve as a member on the Sierra County Recreation & Tourism Advisory Board, and Commissioner Mitchell to serve as the alternate. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

13. Discussion/Action: Appointment of a Governing Body Board Member to serve on the Jornada Resource Conservation & Development Council.

Mayor Pro-Tem Forrister made a motion to appoint Commissioner Mitchell to serve as a member on the Jornada Resource Conservation & Development Council. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

I. ADJOURNMENT:

Mayor Hechler adjourned the meeting at 12:10 p.m.

Passed and Approved this 24th day of January, 2024.

Rolf Hechler, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk

TorC City Clerk

From: Ron Fenn <fenwron234@gmail.com>
Sent: Monday, December 11, 2023 9:54 AM
To: TorC City Clerk; Hechler, Rolf; Gonzales, Angela; Mitchell, Destiny; Fahl, Merry Jo; Forrister, Amanda; Tavizon, Luis; Ingo Hoeppe
Subject: Important Issue to be Discussed
Attachments: Armory Property Report.pdf

Dear recipient,

Attached is a copy of the issue I will be discussing with you during public comment on Dec 13th.

I hope that it shines some light on the Armory issue and offers a possible solution without the enormous expense anticipated.

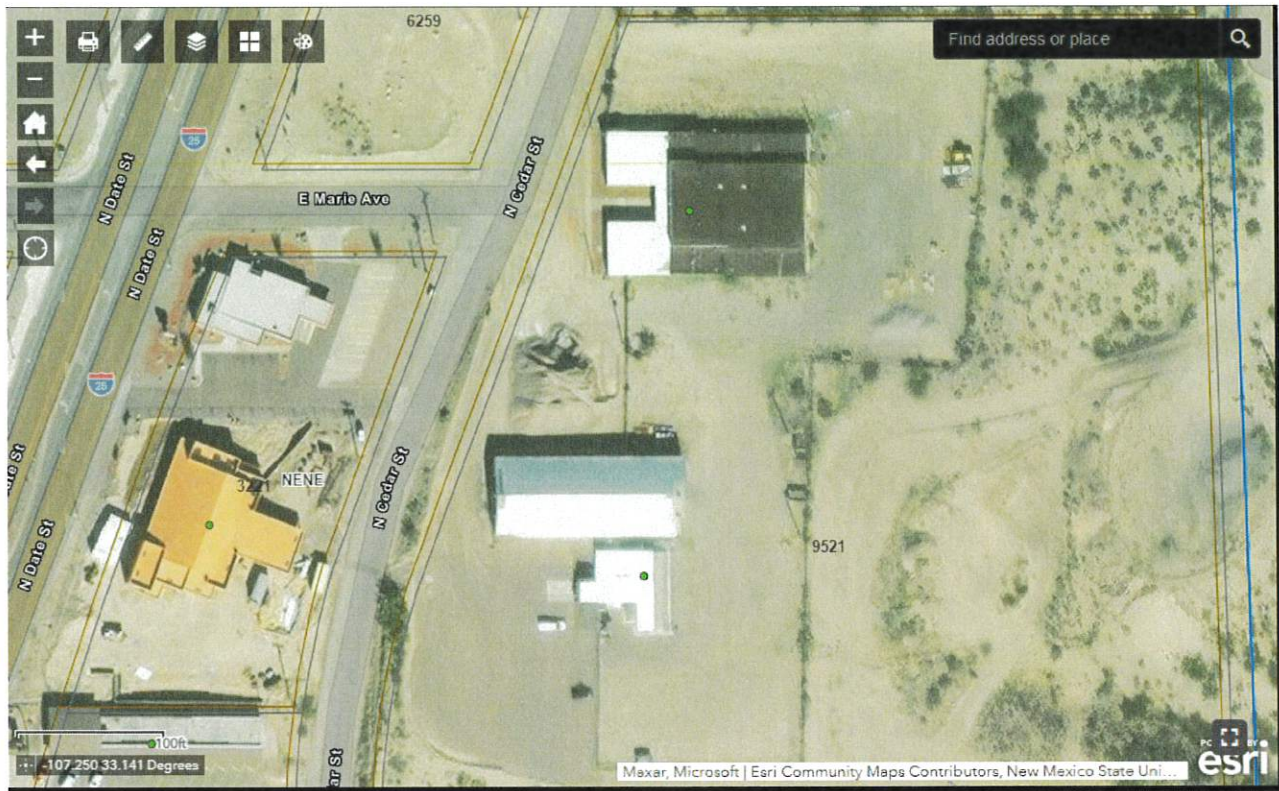
Thank you for your attention to this matter.

Sincerely,

Ron Fenn Co-CEO, City of Truth or Consequences, NM
575-894-1543

and "JUSTICE for ALL"...not "JUST THIS " for so many!

Armory Property



The ~13,000 sq ft Armory is only part of the Sierra County Assessors Parcel number 3022078033068 property assessment, along with the large Storage building and Animal Shelter.

The expenditure of \$4,500,000 (\$6,200,000 with interest would not raise the full value of the property by that amount and would merely increase the Exempt Tax value which does nothing for the community. Per County Assessor.

A potentially favorable use of the building(s) would be to sell to a commercial entity for Tax Revenue producing purposes rather than Tax Consuming use as proposed.

The “engineering assessment” stating that renovation would be less than new construction is deceptively designed to corroborate a factious need.

A new construction would not require 13,000 sq ft to improve the perceived needs of a new Chief of Police as a replacement for the current 5,000 sq ft building, in use for the past 17 years in a community that has seen a population drop from 2000’s 7,400 to today’s 5,977¹, when TCPD operated for years from a 2,500 sq ft building now the Admin Annex building.²

¹ ,<https://www.census.gov/quickfacts/fact/table/truthorconsequencescitynewmexico/PST045222>

² Research and Report by Ron Fenn

ALTERNATE PROPOSAL



This location, the former Sierra County Annex building at 855 Van Patten St. was proposed as an alternative to the costly renovation of the Armory building by a former City Commissioner and retired professional businessman and prominent member of the T or C community.

The Building recently, vacated by the County for its new location on Date Street has approximately 7,500 sq ft of office and meeting space and is in excellent very likely move-in condition.

The building is very secure with limited access points and no windows. The property has an extensive parking area that could be fenced and divided for other use.

Any required or desired modifications could be done on a need and funding basis while in occupied and operated as a police station. Location is close to the downtown and on a major access route.

This building has a significantly lower Property Tax Exemption which is good for the community and lower operating cost than a building nearly twice the size. Please consider and contact the County for acquisition negotiation.

TCPD BUILDING



The current Police Station at 507 McAdoo has served the T or C community well for the past 17 years and though criticized for its origin and possible shortcomings could well continue to serve the community for years to come without the expenditure of over 6 million dollars while the City suffers from real water, sewer, electric and street problems associated with long-term neglect and lack of planning for upgrade and replacement.

Though it might be sold, due to its modifications as a police station its privately appraised value in 2017 was only about \$250,000. That amount could offset the cost of the 855 Van Patten property significantly more than the proposed Armory renovation. Under the “Best Use” principle concerning the public monies it is a no-brainer.

Given the proposed Resolution 21 23/24 declaring an emergency and disaster it would seem inconceivable to move ahead with this expenditure notwithstanding the probable rejection by the voters in a Special Election.

Please consider rescinding Ordinance 756 before its execution date and possibly avoid the prospect of its defeat by the voters. Thank you.



Search by [Owner #](#) [Owner Name](#) [Mailing Zip Code](#) [Property Code](#) [Physical Address](#) [Subdivision](#) [Metes](#) [Assessor Map Lookup](#)

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Owner Information

Owner # 2681 District 6 IN
CITY OF TRUTH OR CONSEQUENCES

505 SIMS ST
T OR C NM 87901

Estimated Taxes for Owner

Estimated Tax	Estimated Year used
\$0.00	2023

[Calculate Estimated Tax](#)

Recap Value Information

Central Full Value	0	Full Value	332304
Land Full Value	49440	Taxable Value	110768
Improvements Full value	282864	Exempt Value	110768
Personal Property Full Value	0	Net Value	0
Manufactured Home Full Value	0		
Livestock Full Value	0		

Property Information

Property Code 3022078300488
Book 106 Page 1255 Reception# 0
Physical Address 507 MCADOO
Bldg Apt
Subdivision PALOMAS, HOT SPRINGS TOWNSITE
BLOCK 3 LOT
BLOCK 3 LOT
LOTS 31,32,33
25'X 120' ADJ LOT 33
POLICE DEPARTMENT

Property Value Information

008 Non-Residential Other Exemptions 0.00 110768



Search by [Owner #](#) [Owner Name](#) [Mailing Zip Code](#) [Property Code](#) [Physical Address](#) [Subdivision](#) [Metes](#) [Assessor Map Lookup](#)

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Owner Information

Owner # 8392 District 6 IN
COUNTY OF SIERRA
ATTN ADMINISTRATIVE OFFICE SUITE D

1712 N DATE ST
TORC NM 87901

Estimated Taxes for Owner

Estimated Tax	Estimated Year used
\$0.00	2023

[Calculate Estimated Tax](#)

Recap Value Information

Central Full Value	0	Full Value	475887
Land Full Value	61362	Taxable Value	158629
Improvements Full value	414525	Exempt Value	158629
Personal Property Full Value	0	Net Value	0
Manufactured Home Full Value	0		
Livestock Full Value	0		

Property Information

Property Code 3022079418085
Book 114 Page 200 Reception# 200901448
Physical Address 855 VAN PATTEN
Bldg Apt
Subdivision PALOMAS, HOT SPRINGS TOWNSITE
BLOCK 17 LOT
LOTS 1 THRU 6, S2 OF LOT 7 LESS
HYW W50' OF LOTS 17 THRU 20
2761.6 SO FT IN VACATED ALLEY

Property Value Information

008 Non-Residential Other Exemptions 0.00 158629



Search by [Owner #](#) [Owner Name](#) [Mailing Zip Code](#) [Property Code](#) [Physical Address](#) [Subdivision](#) [Metes](#) [Assessor Map Lookup](#)

[Click on Print](#)

Owner Information

Owner # 9521 District 6 IN
CITY OF T OR C

505 SIMS ST
T OR C NM 87901

Estimated Taxes for Owner

Estimated Tax	Estimated Year used
\$0.00	2023

[Calculate Estimated Tax](#)

Recap Value Information

Central Full Value	0	Full Value	1160070
Land Full Value	345360	Taxable Value	386690
Improvements Full value	814710	Exempt Value	386690
Personal Property Full Value	0	Net Value	0
Manufactured Home Full Value	0		
Livestock Full Value	0		

Property Information

Property Code 3022078033068
Book 125 Page 969 Reception# 201501254
Physical Address
Bldg Apt
Subdivision COUNTRY CLUB HEIGHTS
BLOCK 13 LOT
BLOCK 13 LOT
LOTS 1,2,3,10,11,12
COUNTRY CLUB HEIGHTS
BLOCK 14
LOTS 1,2
COUNTRY CLUB HEIGHTS
BLOCK 15
LOTS 1,2, VACATED MARIE ST
COUNTRY CLUB HEIGHTS
BLK 16
LOTS 1,2,3, VACATED MARIE ST
COUNTRY CLUB HEIGHTS
BLOCK 19
LOT 7, VACATED MARIE ST
(OLD NAT'L GUARD ARMORY)

Property Value Information

008 Non-Residential Other Exemptions 0.00 386690

Water Leaks Report

Water Leak Cost Tracker

Total Dept. Leak Cost for Repairs

July to December 2023

\$95,851.73

Total Contractor Leaks Cost for Repairs

July to December 2023

\$11,749.65

July of 2023
Water Leak Cost Tracker

REPORTED DATE	ADDRESS	PARTS USED	COST OF PARTS	LOCATE NEEDED? YES OR NO	811 COST	w/ww	COST OF CREW	EQUIPMENT	COST OF EQUIPMENT	COMPLETION DATE
7/19/2023	8TH AND PERSHING	3/4"X 3" POLY	30.9	YES	0.68	RYAN, JUSTIN, JAMISON	53.85	VACTOR TRUCK, 410 BACKHOE	121.27	7/19/2023
7/20/2023	306 N MAPLE	3/4"X 3" POLY	30.9	YES	0.68	RYAN, JUSTIN, JAMISON	53.85	VACTOR TRUCK, 410 BACKHOE	121.27	7/20/2023
7/21/2023	612 PINE	3/4"X 3" POLY	30.9	YES	0.68	RYAN, JUSTIN, JAMISON	53.85	VACTOR TRUCK, 410 BACKHOE	121.27	7/30/2023
7/28/2023	8TH AND FIR	4.43-4.83 X 7.5 CLAMP	129.99	YES	0.68	RYAN, JUSTIN, JAMISON	53.85	VACTOR TRUCK, 410 BACKHOE	121.27	7/28/2023

Total cost

\$ 222.69

\$ 2.72

\$ 215.40

\$ 485.08

\$ 925.89

Grand Total - Jul

\$ 925.89

**August of 2023
Water Leak Cost Tracker**

REPORTED DATE	ADDRESS	PARTS USED	PARTS COST	LOCATE NEEDED? YES OR NO	811 COST	CREW-DEPARTMENT W/WW	WAGE FOR CREW	EQUIPMENT	COST FOR EQUIPMENT	Ci D
8/25/2023	114 E 7TH	RAISER	\$163.30	NO		JUSTIN	\$15.95	NO EQUIPMENT	\$0.00	
8/11/2023	120 E VAL VERDE	3/4X3" POLY	\$30.90	YES	0.68	JUSTIN, ANTHONY	\$31.90	VAC TRUCK, BACKHOE410	\$121.27	
8/29/2023	1595 ANIMAL SHELTER RD	2" T,90,SLIPXSLIP AND 2 UNIONS	\$50.30			JUSTIN AND TONY	\$31.90	VAC TRUCK, BACKHOE410	\$121.27	
8/11/2023	308 VEATER	1"x6" POLY CLAMP	\$65.80	YES	0.68	JUSTIN, JAMISON	\$31.90	VAC TRUCK, BACKHOE410	\$121.27	
8/11/2023	114 N MAPLE	3/4 X 3 IN POLY	\$30.90	NO		JUSTIN, JAMISON,RYAN	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/18/2023	1301 MERCURY	2- 6.43-6.85 X7	\$100.90	YES		JUSTIN, RYAN, JAMISON	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/7/2023	1307 Mercury St	3/4 X3" POLY	\$30.90	NO		JUSTIN, JAMISON,RYAN	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/7/2023	1416 Tin St	6IN X7 CLAMP	\$161.51	YES	0.68	JUSTIN,JAMISON,RYAN	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/11/2023	1803 S BOARDWAY	2.35-2.63 x 7" CLAMP	\$103.55	YES	0.68	JUSTIN,JAMISON,RYAN	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/15/2023	603 RIVERSIDE	3/4X3" POLY	\$30.90	YES	0.68	JUSTIN,TONY, JAMISON	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/7/2023	607 N Riverside Dr	POLY COUPLING	\$34.60	NO		JUSTIN, JAMISON, RYAN	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/7/2023	615 N MAPLE	3-3/4 X 3" POLY	\$92.70	NO		JUSTIN,TONY, JAMISON	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/3/2023	619 Gray Ave	2- 2"CLAMPS	\$103.55	YES	0.68	JUSTIN, RYAN, JAMISON	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/11/2023	801 PALOVERDE	1X6" POLY	\$65.80	YES	0.68	JUSTIN,ANTHONY, JAMISON	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/3/2023	801 Powey Ln	3/4X 3" POLY	\$30.90	YES	0.68	JUSTIN, RYAN, JAMISON	\$47.85	VAC TRUCK, BACKHOE410	\$121.27	
8/30/2023	211 N SILVER	4.43-4.83X 7 CLAMP	\$135.14	YES	0.68	JUSTIN, JAMIE, TONY	\$55.47	VAC TRUCK, BACKHOE410	\$121.27	
8/7/2023	827 Hillcrest Dr	4.45-4.85 x 15" CLAMP	\$266.03	YES	0.68	JUSTIN, JESUS, JAMISON	\$55.47	VAC TRUCK, BACKHOE410	\$121.27	
8/29/2023	1273 SIMPSON	9"C900 2-6IN HYMAX	\$637.62	YES	0.68	JUSTIN,TONY	\$63.80	VAC TRUCK, BACKHOE410	\$121.27	
8/31/2023	340 RIVERSIDE	3/4-INSTATIGHT 3/4-5/8 FEMALE	\$147.10	YES	0.68	JUSTIN,TIM,TONY AND RENE	\$63.80	VAC TRUCK, BACKHOE410	\$121.27	
8/29/2023	340 W RIVERSIDE	22.5' POLY	\$30.90			JUSTIN, TONY	\$63.80	VAC TRUCK, BACKHOE410	\$121.27	
8/17/2023	827 Hillcrest Dr	3/4X 3" POLY	\$228.17	YES	0.68	JUSTIN, TONY	\$63.80	VAC TRUCK, BACKHOE410	\$121.27	
8/1/2023	2501 S BROADWAY	4.45-4.83X 12" CLAMP	\$30.90	YES	0.68	JUSTIN, JAMISON, RYAN,JESUS	\$71.42	VAC TRUCK, BACKHOE410	\$121.27	
8/3/2023	605 Corona St	3/4 X 3" POLY	\$65.35	YES	0.68	JUSTIN, JAMISON, RYAN,JESUS	\$71.42	VAC TRUCK, BACKHOE410	\$121.27	
8/7/2023	711 Gold St	3/4 X 6IN POLY	\$0.00	NO		JUSTIN, JAMISON, RYAN,JESUS	\$71.42	VAC TRUCK, BACKHOE410	\$121.27	
8/11/2023	103 S ARROWHEAD	NO PARTS RESET OLD	\$266.03	YES	0.68	JUSTIN, TONY, RENE	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/17/2023	104 RIO GRANDE	4.45-4.83 X15	\$30.90	YES	0.68	JUSTIN, TONY, JAMISON	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/7/2023	1306 W 6th Ave	3/4X3" POLY	\$30.90	YES	0.68	JUSTIN, JAMISON,RYAN	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/11/2023	1402 E 8TH	3/4 X 6" POLY	\$65.35	YES	0.68	JUSTIN, JAMISON,RYAN	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/11/2023	1505 NORTH ST	1"x6" POLY CLAMP	\$65.80	YES	0.68	JUSTIN,JAMISON,RYAN	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/11/2023	225 W 8TH	3/4 X3" POLY and 3/4X6 POLY	\$150.10	YES	0.68	JUSTIN, RYAN,JESUS	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/7/2023	2605 S BROADWAY	1X6" CLAMP	\$65.80	YES	0.68	JUSTIN,JAMISON,RYAN	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/7/2023	304 1st Ave	3/4X6" AND 3/4X3"	\$96.25	YES	0.68	JUSTIN,TONY,JAMISON	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/22/2023	340 W RIVERSIDE	3/4X3" POLY	\$30.90	YES	0.68	W-THONY, JAMISON, RYAN.	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/17/2023	3RD AND GOLD	3/4 X3" CLAMP	\$30.90	YES	0.68	JUSTIN,ANTHONY, JAMISON	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/7/2023	501 Gold St	3/4 X3" POLY	\$30.90	YES	0.68	JUSTIN, JAMISON,RYAN	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/28/2023	705 N SILVER	3/4X3" POLY	\$30.90	YES	0.68	JUSTIN, TONY, RENE	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/7/2023	719 S Broadway St	3/4X 6" POLY	\$65.35	YES	0.68	JUSTIN, RYAN, JAMISON	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/21/2023	804 SPRUCE	3/4X6IN POLY	\$65.35	YES	0.68	W-JUSTIN,ANTHONY, JAMISON	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/15/2023	901 N PERSHING	3/4X6"POLY	\$65.35	YES	0.68	JUSTIN,JAMISON,RYAN	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/7/2023	East 6th Avenue & Tingley Street	3/4 X3" POLY	\$30.90	YES	0.68	JUSTIN, JAMISON,RYAN	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/17/2023	1441 E RIVERSIDE	3/4"X3" POLY	\$30.90	YES	0.68	JUSTIN, TONY, JAMISON	\$95.70	VAC TRUCK, BACKHOE410	\$242.54	
8/7/2023	Gold Street & East 3rd Avenue	5-3/4X3" POLY	\$154.50	YES	0.68	JUSTIN, TONY, JAMISON	\$215.61	VAC TRUCK, BACKHOE410	\$485.08	
8/1/2023	2953 S BROADWAY		\$750.99	YES		SMITHCO				

Total cost

\$3,944.80

25.16

\$3,060.91

\$8,367.63

Total Contractor

\$750.99

Grand Total - Aug

**September of 2023
Water Leak Cost Tracker**

REPORTED DATE	ADDRESS	PARTS USED	COST OF PARTS	LOCATE NEEDED? YES OR NO	811 COST	CREW-DEPARTMENT W/WW	COST OF CREW	EQUIPMENT	COST OF EQUIPMENT	COM DATI
8/28/2023	2005 S BROADWAY	3/4"X3" POLY	30.9	YES	0.68	TONY,JUSTIN	39.52	VAC TRUCK, BACKHOE 410	121.27	
8/15/2023	612 JOFFRE	3/4"X3" POLY	30.9	YES	0.68	RENE,JUSTIN	39.52	VAC TRUCK, BACKHOE 410	121.27	
9/2/2023	1016 KOPRA ST	3/4X3" POLY	30.9	YES	0.68	JUSTIN,TONY	39.52	VAC TRUCK, BACKHOE 410	121.27	
9/26/2023	2ND AND MAGNOLIA	4.50X15" CLAMP	266.03	YES	0.68	JUSTIN,CALEB,WESLEY	55.47	VAC TRUCK, BACKHOE 410	121.27	
9/14/2023	NGOLD AND E 7TH	1"X3" CLAMP	14.84	YES	0.68	RENE, TONY	63.8	VAC TRUCK, BACKHOE 410	242.54	
8/23/2023	133 N RIVERSIDE	3/4"X3" POLY	30.9	YES	0.68	RENE,TONY	63.8	VAC TRUCK, BACKHOE 410	242.54	
8/23/2023	212 AUSTIN	3/4"X3" POLY	30.9	YES	0.68	TONY,RENE	63.8	VAC TRUCK, BACKHOE 410	242.54	
9/21/2023	809 N CABALLO	3/4"X6" CLAMP	65.35	YES	0.68	ISAIAH,TONY	63.8	VAC TRUCK, BACKHOE 410	242.54	
9/12/2023	1304 ORE ST	3/4X3" POLY	30.9	YES	0.68	RENE, TONY,TIM	95.7	VAC TRUCK, BACKHOE 410	242.54	
9/12/2023	1580 E 6th	3/4X3" POLY	30.9	YES	0.68	RENE, TONY,TIM	95.7	VAC TRUCK, BACKHOE 410	242.54	
9/12/2023	MARSHALL AND ORE	4X8 CLAMP	135.14	YES	0.68	RENE, TONY,TIM	95.7	VAC TRUCK, BACKHOE 410	242.54	
8/21/2023	499 S BROADWAY	1"METER,1"PVC LINE	205.55	NO		TONY,ISAIAH, JUSTIN	110.94	VAC TRUCK, BACKHOE 410	242.54	
8/29/2023	1595 ANIMAL SHELTER RD	2"TEE,90, SLIPXSLIP 2-UNIONS	108.4	YES	0.68	JUSTIN, TONY, RENE	110.94	VAC TRUCK, BACKHOE 410	242.54	
8/24/2023	602 ELM	2-3/4 UTRA-TITE	62.9	YES	0.68	ISAIAH,TONY,JUSTIN	110.94	VAC TRUCK, BACKHOE 410	242.54	
8/21/2023	1309 ALUMINUM	3' 4"SCH40, 2-4"HYMAX	768.05	YES	0.68	TONY,RENE,JUSTIN	110.94	VAC TRUCK, BACKHOE 410	242.54	
8/11/2023	1304 E 8TH	3/4"X3" POLY	30.9	YES	0.68	TONY,RENE,JUSTIN	110.94	VAC TRUCK, BACKHOE 410	242.54	
8/9/2023	125 N ASH	3/4"X3" POLY	30.9	YES	0.68	TONY,RENE,JUSTIN	110.94	VAC TRUCK, BACKHOE 410	242.54	
8/13/2023	711 SUNSET	3/4"X6" CLAMP	65.35	YES	0.68	TONY,RENE,JUSTIN	110.94	VAC TRUCK, BACKHOE 410	242.54	
9/1/2023	346 N RIVERSIDE	3/4X3" POLY	30.9	YES	0.68	JUSTIN, TONY, ISAIAH	110.94	VAC TRUCK, BACKHOE 410	242.54	
9/25/2023	413 N MAGNOLIA	2-4"HYMAX,4" C900	376.26	YES	0.68	JUSTIN,ISAIAH, RENE, TONY	142.84	VAC TRUCK, BACKHOE 410	242.54	
9/19/2023	707 FIR ST	4.45-4.85X7 CLAMP	135.14	YES	0.68	JUSTIN, TONY, RENE, ISAIAH	142.84	VAC TRUCK, BACKHOE 410	242.54	
9/7/2023	1107 N MASCALERO	6.56-6.96 X 7.5 CLAMP	161.51	YES	0.68	JUSTIN,TONY, TIM, PATRICK	142.84	VAC TRUCK, BACKHOE 410	242.54	
9/7/2023	1107 N BOSQUE DR	2-6IN HYMAX	996.6	YES	0.68	PATRICK, TONY, JUSTIN,ISAIAH,RENE	174.74	VAC TRUCK, BACKHOE 410	242.54	
8/31/2023	211 N SILVER	4.43-4.83X7" CLAMP	135.14	YES	0.68	JUSTIN,TONY,JAMIE	188.947	VAC TRUCK, BACKHOE 410	242.54	
9/25/2023	3RD AND BIRCH ST	2-4" hymax, 4"C900	1492.11	YES	0.68	JUSTIN,ISAIAH, RENE, TONY THEN SMITHCO	642.36	VAC TRUCK, BACKHOE 410	727.62	
9/8/2023	N BOSQUE AND E COCHISE	6"MU, 6" HYMAX	546.28	YES	0.68	JUSTIN, PATRICK, RENE, ISAIAH, TONY	698.96	VAC TRUCK, BACKHOE 410	485.08	
9/26/2023	3RD AND ASH ST		5346.29	YES	0.68	times 2 smith co				
9/26/2023	COOK ST AND BELLE		1354.69	YES	0.68	STEVE BELL CONSTRUCTION				

Total cost	\$ 5,843.65	\$ 18.36	\$ 3,737.38	\$ 6,548.58	\$
Total Contractor	\$ 6,700.98				\$
Grand Total - Sep					\$

**October of 2023
Water Leak Cost Tracker**

REPORTED DATE	ADDRESS	PARTS	COST OF PARTS	LOCATE NEEDED? YES OR NO	811 COST	CREW-DEPARTMENT W/WW	COST OF CREW	EQUIPMENT USED	COST OF EQUIPMENT	COMPL
9/28/2023	303 TINGLEY	3/4"X3" POLY	30.9	YES	0.68	JUSTIN, TONY, ISAIAH	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
10/25/2023	707 SIERRA VISTA DR	2-3/4 INSTATITE, 1-3/4"X3"	229.8	YES	0.68	TONY, ISAIAH, JUSTIN	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
9/28/2023	3RD AND BIRCH	2-4" HYMAX, 4" C900	20846.15	YES	0.68	STEVE BELL				
8/23/2023	133 N RIVERSIDE	3/4"X3" POLY	30.9	YES	0.68	JUSTIN, TONY, CALEB	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
9/5/2023	1360 TUNGSTEN			YES	0.68	JUSTIN, TONY, CALEB	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
8/23/2023	212 AUSTIN	3/4"X3" POLY	30.9	NO	0.68	JUSTIN, TONY, CALEB	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
10/30/2023	1305 TUNGSTEN	4.45-4.85X 12" CLAMP	228.17	YES	0.68	TONY, RENE, JUSTIN	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
8/28/2023	2005 S BROADWAY	3/4"X3" POLY	30.9	NO		TONY, RENE, JUSTIN	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
	360 W 8TH			NO		TONY, RENE, JUSTIN	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
9/12/2023	MARSHALL AND ORE	4X8 CLAMO	135.14	NO		JUSTIN, TIM, CALEB	110.94	VACTOT TRUCK, 410 BACKHOE	242.54	
9/29/2023	306 N MAPLE	CORB STOP, CURB STOP, 50' 3/4 POLY	263.3	YES		JUSTIN, ISAIAH, RENE, TONY, PATRICK	174.74	PUMP TRUCK, DUMP TRUCK, 410 BACKHOE	382.12	

Total cost

\$ 21,826.16

\$ 4.76

\$ 1,173.20

\$ 2,564.98 \$

Grand Total -
Oct

\$

November of 2023
Water Leak Cost Tracker

REPORTED DATE	ADDRESS	PARTS USED	COST OF PARTS	LOCATE NEEDED? YES OR NO	811 COST	w/ww	COST OF CREW	EQUIPMENT	COST OF EQUIPMENT	COMPLETION DATE
11/17/2023	VEATER AND ANIMAL SHELTER RD	6.56-6.96 X 12.5 CLAMP	260.24	YES	0.68	TONY, CALEB	63.8	VACTOR TRUCK, BACKHOE	242.54	
11/17/2023	906 CABALLO	3/4"X3" CLAMP	30.9	YES	0.68	JUSTIN, CALEB, TONY	95.7	VACTOR TRUCK, BACKHOE	242.54	11/3/2023
10/16/2023	125 N ASH	3/4"X3" CLAMP	30.9	YES	0.68	RENE, CALEB, TONY	95.7	VACTOR TRUCK, BACKHOE	242.54	11/16/2023
8/22/2023	1011 PINE	4.45-4.73X12.5	228.17	YES	0.68	RENE, CALBE, TONY	95.7	VACTOR TRUCK, BACKHOE	242.54	11/16/2023
10/16/2023	211 N SILVER	4.45-4.73X12.5	228.17	YES	0.68	RENE, TONY, CALEB	95.7	VACTOR TRUCK, BACKHOE	242.54	11/16/2023
11/17/2023	608 N CEDAR	2-3/4 INSTATITE, 3' 3/4 POLY	101.43	YES	0.68	RENE, JUSTIN, CALEB	110.94	VACTOR TRUCK, BACKHOE	242.54	11/13/2023
10/19/2023	412 N DATE IN THE ALLEY	1"X3" CLAMP	14.84	YES	0.68	TONY, JUSTIN, CALEB, ISAIAH	142.84	VACTOR TRUCK, BACKHOE	242.54	11/7/2023
11/17/2023	817 CARMEN	2-3/4"X3" CLAMP	61.8	YES	0.68	JUSTIN, RENE, TONY, CALEB	142.84	VACTOR TRUCK, BACKHOE	242.54	11/8/2023
10/19/2023	817 N PERSHING	2-3/4"X3" CLAMP	61.8	YES	0.68	JUSTIN, RENE, TONY, CALEB	142.84	VACTOR TRUCK, BACKHOE	242.54	11/8/2023
11/9/2023	106 CHERRY LN	2-6"C900, 2-6"HYMAX	1027.56	YES	0.68	JUSTIN, RENE, CALEB, TONY	142.84	VACTOR TRUCK, BACKHOE	242.54	11/10/2023
11/17/2023	1180 E RIVERSIDE	3/4 CPT XPOLY ADAPTER	34.6	YES	0.68	TONY, RENE, CALEB, JUSTIN	142.84	VACTOR TRUCK, BACKHOE	242.54	11/15/2023
10/16/2023	144 S MAGNOLIA	3/4"X3" CLAMP	30.9	YES	0.68	JUSTIN, TONY, RENE, CALEB	142.84	VACTOR TRUCK, BACKHOE	242.54	11/15/2023
9/26/2023	4TH AND SILVER	3/4"X3" CLAMP	30.9	YES	0.68	RENE, CALEB, TONY, JUSTIN	142.84	VACTOR TRUCK, BACKHOE	242.54	11/17/2023
8/28/2023	208 GRAPE	3/4"X3" CLAMP	30.9	YES	0.68	RENE, CALEB, TONY, JUSTIN	142.84	VACTOR TRUCK, BACKHOE	242.54	11/21/2023
10/19/2023	1282 W 6TH	4.43-4.83 X7 CLAMP, 4"X3/4 SADDLE,	187.97	YES	0.68	JUSTIN, CALEB, TONY, RENE	142.84	VACTOR TRUCK, BACKHOE	242.54	11/8/2023
9/7/2023	206 E 2ND	4.45-4.85X15" CLAMP	266.03	YES	0.68	TONY, JUSTIN, RENE, CALEB	142.84	VACTOR TRUCK, BACKHOE	242.54	11/3/2023
10/19/2023	1006 HENSON	INSTATITE, 3/4 CURBSTOP	210.26	YES	0.68	JUSTIN, CALEB, TONY, ISAIAH	142.84	VACTOR TRUCK, BACKHOE	242.54	11/7/2023
10/19/2023	718 CARMEN	3/4 POLY ADAPTER, CURBSTOP, INSTATITE	330.88	YES	0.68	JUSTIN, TONY, CALEB, ISAIAH	178.45	VACTOR TRUCK, BACKHOE	363.81	11/7/2023
11/8/2023	206 CHERRY LN	6.63-6.93x7 CLAMP	161.51	YES	0.68	JUSTIN, TONY, CALEB, RENE	214.26	VACTOR TRUCK, BACKHOE	363.81	11/8/2023
11/1/2023	1007 N BOSQUE	2-6IN ROMAC, 6'-6"C900	1089.48	YES	0.68	JUSTIN, CALEB, PATRICK, RENE	642.18	VACTOR TRUCK, BACKHOE	727.62	11/1/2023
11/8/2023	305 CHERRY LN	2-3/4" instatite, 1-3/4"X3" CLAMP	229.8	YES	0.68	TONY, RENE, CALEB, JUSTIN	927.86	VACTOR TRUCK, BACKHOE	970.16	11/8/2023

Total cost

\$ 4,649.04

\$ 14.28

\$ 4,091.53

\$ 6,548.58 \$ 15,303.43

Grand Total - Nov

\$ 15,303.43

**December of 2023
Water Leak Cost Tracker**

REPORTED DATE	ADDRESS	PARTS USED	COST OF PARTS	LOCATE NEEDED? YES OR NO	811 COST	w/ww	COST OF CREW	EQUIPMENT	COST OF EQUIPMENT	COMPL
12/1/2023	TIN AND MARSHALL	2-6" HYMAX, 8'-6" C900	1120.44		0.68	JUSTIN, TONY, ISIAH, PATRICK	142.84	410 BACKHOE, VACTOR TRUCK	\$242.54	
12/5/2023	714 MAPLE	3/4"X3" CLAMP	30.9	YES		JUSTIN, TONY, ISIAH, CALEB	142.84	410 BACKHOE, VACTOR TRUCK	\$242.54	
11/17/2023	2101 S BROADWAY	3/4"X3" CLAMP	30.9	YES	0.68	JUSTIN, TONY, RENE, ISIAH, CALEB	174.74	410 BACKHOE, VACTOR TRUCK	\$242.54	
11/17/2023	616 MAPLE	3/4"X3" CLAMP, 3/4"X6" CLAMP	96.25	YES	0.68	JUSTIN, TONY, RENE, ISIAH, CALEB	174.74	410 BACKHOE, VACTOR TRUCK	\$242.54	
8/21/2023	1205 PLATINIUM	CPT FEMALE X POLY ADAPTER, 3/4 INSTATITE	34.6	YES	0.68	JUSTIN, CALEB, TONY, RENE, ISIAH	174.74	410 BACKHOE, VACTOR TRUCK	\$242.54	
11/17/2023	615 N MAPLE	3-4"X6" CLAMP, 3/4 IR FEMALE ADAPTER, 3/4 IR FEMALE TEE, 3/4 METER ADAPTER, 2-3/4 INSTATITES, 3/4 BALL VALVE	952.07		0.68	JUSTIN, RENE, ISIAH, TONY, CALEB	174.74	410 BACKHOE, VACTOR TRUCK	\$242.54	
11/17/2023	418 N SILVER	3-3/4"X3" CLAMPS	92.7	YES	0.68	RENE, CALEB, TONY	47.85	410 BACKHOE, VACTOR TRUCK	\$121.27	
8/11/2023	417 E 1ST	3/4"X3" CLAMP	30.9	YES	0.68	JUSTIN, TONY, RENE, CALEB	142.84	410 BACKHOE, VACTOR TRUCK		
12/5/2023	711 N GOLD	CORBSTOP, 3/4"X3" POLY CLAMP 2-INSTATITE	340.61	YES	0.68	TONY, RENE, CALEB, JUSTIN	142.84	410 BACKHOE, VACTOR TRUCK	\$242.54	
12/7/2023	512 POPLAR	4.45-4.73X15 CLAMP	266.03		0.68	JUSTIN, TONY, ISIAH, RENE	71.42	410 BACKHOE, VACTOR TRUCK	\$242.54	
11/17/2023	1402 TUNGSTEN	6 X 15CLAMP	223.6	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	1401 MERCURY IN THE ALLEY	3/4"X 6" CLAMP	65.35	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	118 RIO GRANDE	3/4"X3" CLAMP	30.9	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	705 POWEY LANE	3/4"X3" CLAMP, 3/4 INSTATITE, 3/4 CORBSTOP, 3/4 POLY ADAPTER	275.76	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	1404 ALUMINUM	3/4"X6" CLAMP	65.35	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
11/9/2023	2020 VEATER	2-6"HYMAX, 10'- 6" C900	1151.4	YES	0.68	JUSTIN, FRED, CALEB, TRISTAN, ISIAH, BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	709 OLIVIO	3/4"X1" CLAMP		YES	0.68	JUSTIN, FRED, CALEB, TRISTAN, ISIAH, BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	701 SUNSET IN THE ALLEY	3/4"X3" CLAMP	30.9	YES	0.68	JUSTIN, FRED, CALEB, TRISTAN, ISIAH, BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
	703 SUNSET	3/4"X3" CLAMP	30.9	YES	0.68	JUSTIN, FRED, CALEB, TRISTAN, ISIAH, BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
11/9/2023	2225 VEATER	6.56"X12" BAND CLAMP	260.24	YES	0.68	JUSTIN, FRED, CALEB, TRISTAN, ISIAH, BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	ALUMINUM AND VEATER	6.56X7.5 CLAMP	161.51	YES	0.68	JUSTIN, FRED, CALEB, TRISTAN, ISIAH, BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	2265 VEATER	6" CLAMP	255.36	YES	0.68	JUSTIN, CALEB, ISIAH	110.94	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	174 W 7TH	2-3/4"X3" CLAMPS	61.8	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	1406 TUNGSTEN IN THE ALLEY	2-6.56-6.96X7.5 CLAMP	93.85	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	607 CEDAR	3/4"X3" CLAMP	30.9	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
11/9/2023	1400 TIN IN THE ALLEY	3/4"X6" CLAMP	65.35	YES	0.68	TONY, DAVID, RENE, PHILLIP, ISIAH, BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	
12/5/2023	VEATER AND ZINC	6.56-X12.5 CLAMP, 6.56X7.5 CLAMP	421.75	YES	0.68	JUSTIN, FRED, CALEB, TRISTAN, ISIAH, BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$354.50	

8/29/2023	1273 SIMPSON	90 CAST, 2- MJS, 2-4" HYMAX	709.3	YES	0.68	JUSTIN,FRED,CALEB,TRISTAN,ISIAAH,BUSTER, JOHN	55.47	410 BACKHOE, VACTOR TRUCK,DUMP TRUCK	\$354.50
11/27/2023	105 S SILVER	4"X15" CLAMP	266.03	YES	0.68	TONY,DAVID,RENE, PHILLIP,ISIAAH,BOB, MERSED	55.47	310 BACKHOE, VACTOR TRUCK, DUMP TRUCK	\$177.25
12/5/2023	1ST AND MAGNOLIA	4.43"X12" CLAMP,4.43"X7" CLAMP	358.16	YES	0.68	TONY,DAVID,RENE, PHILLIP,ISIAAH,BOB, MERSED,JUSTIN,FRED,CALEB,TRISTAN,ISIAAH,BUSTER, JOHN	55.47	410 BACKHOE,310 BACKHOE, VACTOR TRUCK,	\$177.25
12/5/2023	405 CHARLIES LANE	2-3/4"X3" CLAMP	61.8	YES	0.68	JUSTIN, CALEB, ISIAAH, TONY	142.84	410BACKHOE, VACTOR TRUCK	\$242.54
11/20/2023	4th and Kruger	3/4"X3" CLAMP	30.9	YES	0.68	JUSTIN, CALEB, TONY, ISIAAH	142.84	410BACKHOE, VACTOR TRUCK	\$242.54
12/5/2023	1604 JACKSON	2-3/4 INSTATITES, 3/4"3" CLAMP, 5' IPS POLY	233.1	YES	0.68	JUSTIN, TONY, CALEB, ISIAAH	142.84	410 BACKHOE, VACTOR TRUCK	\$242.54
12/5/2023	809 CABALLO	2- 3/4" INSTATITE, 6' IPS POLY	202.86	YES	0.68	JUSTIN, TONY, ISIAAH, CALEB	142.84	410 BACKHOE, VACTOR TRUCK	\$242.54
12/22/2023	203 S ARROWHEAD	4.45-4.85 x12.5 CLAMP	228.17	YES	0.68	JUSTIN, TONY	118.56	410 BACKHOE, VACTOR TRUCK	\$363.81
12/25/2023	4TH AND N DATE	4IN HYMAX, 4'-4' C900, 1 4' CAP, 4IN MJ KIT C900	481.91	yes	0.68	JUSTIN, CALEB, TONY, ISIAAH, PATRICK	879.19	410 &310 BACKHOE, VACTOR TRUCK	\$3,733.54
12/28/2023	Marshall St		4297.68			SmithCo			

Total cost

\$ 8,792.55

\$ 23.80

\$ 4,123.57

\$13,864.60

Total Contactor

\$ 4,297.68

\$

Grand Total - Dec

Total Contractor for first half (Jul-Dec)

\$

Total for first half (Jul - Dec)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: E.2

SUBJECT: Acknowledge Regular Public Arts Board Minutes, October 17, 2023
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: January 18, 2024
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

Minutes approval.

Recommendation:

Acknowledge minutes.

Attachments:

- Regular Public Arts Board Minutes, October 17, 2023
-

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-24-24

**CITY OF TRUTH OR CONSEQUENCES
PUBLIC ARTS ADVISORY BOARD
MINUTES
Tuesday, October 17, 2023**

REGULAR MEETING

Regular meeting of the Public Arts Advisory Board of the City of Truth or Consequences, New Mexico to be held on Tuesday, October 17, 2023 at 4:00 p.m. in the City Commission Chambers, 405 W. 3rd St, Truth or Consequences, NM 87901.

ROLL CALL:

Sid Bryan, Tourism - Chairman
Cary "Jagger" Gustin, Sierra County Arts Council – Vice-Chairman
Eduardo Alicea, Art Representative
Andy Underwood, Business Community
Suzanne Carlstedt, Member - **Absent**

ALSO PRESENT:

Angie Gonzales – City Manager
Traci Alvarez – Assistant City Manager
Orrin Hechler – Parks Supervisor
Lisa Gabaldon – Deputy Clerk

1. APPROVAL OF THE AGENDA

- a. October 17, 2023

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

2. APPROVAL OF MINUTES

- a. July 18, 2023

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

3. COMMENTS FROM THE PUBLIC

There were no comments from the public at this time.

4. OLD BUSINESS

- a. Discussion/Update: Status of Well Drilling

Assistant City Manager Alvarez stated that the state is not issuing any new water rights to anybody. As for the rights that the City has, it is not in the best interest to allocate any of the water rights that they have. They need to save them for the potential of a well that they may have to look into digging in the future on the north end of town. The only way to move forward with digging a well is if someone is willing to sell some of their water rights privately. The only recommendation that she would have, is if someone out there that would like to donate or sell water rights, otherwise they can look at the potential of doing a fountain running then they can look at a anormal type of fountain going through with city water.

Vice-Chairman Gustin stated that they might have to look at trying to rehab the cistern that's already there; maybe it just needs a new pump. He will ask this board to go before the lodger's tax board and ask if they can continue to do work there or if they have to relinquish the funds and make a new application for that work.

Assistant City Manager Alvarez stated that they thought they had some unassigned water rights; there was an old geo-thermal well over where the swimming pool is at, but because they have not been active and have not been addressed for a long time, they vacated those and the state took them over years ago.

b. Discussion/Update: Status of Allotted Lodgers Tax Fund for Well Drilling

Vice-Chairman Gustin stated that he wants to ask this board to go before the lodger's tax board again. At one point they were holding \$9,014 which is the 2% that is given to the Public Arts Advisory board and then he went back to the lodger's tax advisory board for a request of \$15,000 which was approved, so that would be \$24, 014. He knows that Angie and Bruce promised that the original money would not go away, but it might be that the money has to be returned to the general fund because of the lodger's tax rules and regulations that you have to follow.

Deputy Clerk Gabaldon stated that with lodger's tax they requested the money to used for the well drilling, so because now that it's not what it will be used for, it will go back to the lodger's tax board and they would need to reappear to ask for money for a new request.

Vice-Chairman Gustin stated that he wants to appear before them to ask them if they can just continue work there and try to rehab the old cistern that's already there.

Deputy Clerk Gabaldon stated that we are currently under item b under old business, and the item is under new business.

5. NEW BUSINESS

a. Discussion/Action: Authorize Cary 'Jagger' Gustin to appear before the Lodgers Tax Advisory Board. Cary 'Jagger' Gustin

Vice-Chairman Gustin stated that he would like to appear before the lodger's tax advisory board to request the funding to fix the old cistern and infrastructure.

Deputy Clerk Gabaldon stated that he would need to go back before the Lodger's Tax Advisory Board, because the \$15,000 would go back into the lodger's tax fund. The \$9,014 is separate and it is the 2%. She went on to advise Jagger to be sure and have quotes for when he presents his case to the board.

Member Alicea made a motion to approve Jagger to go before the Lodger's Tax Advisory Board for funding the rehabilitation of the old cistern and infrastructure.

Member Underwood seconded the motion.

Motion carried unanimously.

- b. Discussion/Action: Request to accept donation of Carol Plec Art Sculpture to be placed at the Healing Waters Plaza. Vice-Chairman Cary 'Jagger' Gustin

Vice-Chairman Gustin stated that they have representatives here from the Sierra County Arts Council, a sub-committee, the Carol Plec sculpture committee, Susan Buhler is the chair, Joanne Long, and Rebecca Speaks. Some background information, she was a board member a few years ago and passed and her estate left them a sizeable amount of money, and they would like to create a sculpture and would like to give it as a gift to the City of T or C for the Healing Waters Plaza. They felt that this board would be the starting point to get permission to do that. If this is approved, they will appear before the City Commission and present the idea to them.

Susan Buhler stated that they have a sculpture that lives in Albuquerque, her name is Kendra Brock and she is going to be giving them an estimate on the sculpture. They would like to see it go in the Healing Waters Plaza in a nice spot. She asked for approval and they are asking for \$5,000 to help cover the artist fee and engineer. She is requesting that the Public Arts Board get approval from the City for this project.

OJ Hechler stated that part of his responsibilities is the Parks Department. This last year the commission approved the donation and gift program policy just for this, so it's nice to know that they have a policy in place. Per the policy, something like this for the donation would have to be a recommendation from the Recreation Advisory Board and then it would go to the commission for final approval. The next Recreation Advisory Board meeting is scheduled for December 4, 2023 at 5:30pm. You can present this item at the Recreation Advisory Board meeting and get their recommendation. Per the policy, city staff also needs to look over it to make sure that it makes sense, where it's going, and make sure that it doesn't impede on anything else that's there. Once, we get the recommendation, it will then go to the commission.

Susan Buhler stated that do also have \$9,000.

OJ Hechler advised the board that they do have an application and they can pick it up from the City Manager's Office for this. They will need the dimensions, the size, and then City staff along with whoever is donating, will come up with a location that they can agree on together.

Chairman Bryan stated that he didn't realize that if a donation was from Sierra County artists to the Public Arts Board, that they would have to deal with the Recreation Board.

OJ Hechler stated it's because it is going in a City park, so that is the reason why.

Assistant City Manager Alvarez stated that the Recreation board oversees the City parks.

Member Underwood asked if they have money available for helping with projects like this.

OJ Hechler stated that they do not, it's strictly a donation policy.

Vice-Chairman Gustin advised Susan Buhler that she would need to present this item to the Recreation Advisory Board on December 4, 2023, and once they approve it, it would go before the City Commission for final approval.

Assistant City Manager Alvarez stated that if she is requesting the Public Art Board to support it financially, the first step would be to go to the Recreation Board and they can approve it to City Commission, pending approval of the Art Board on the financial support of it, or you all can vote on the financial support of it now and that whole recommendation will go to the Recreation Board and then to the commission.

Susan Buhler stated that she asked the artist for a ballpark figure on the cost, so she will be sending dimensions and the cost before the next meeting.

6. REPORTS FROM THE BOARD:

No reports from the board.

REPORTS FROM STAFF:

No reports from the City staff at this time.

ADJOURN:

Vice-Chairman Gustin made a motion to adjourn the meeting.

Member Underwood seconded the motion.

Motion carried unanimously.

PASSED AND APPROVED this 16th day of January 2024.

A handwritten signature in blue ink, reading "Sid Bryan", is written over a horizontal line.

Sid Bryan, Chairman



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: F.1

SUBJECT: Discussion/Action – Public Hearing/Final Adoption of Ordinance 762 TDS Franchise Agreement

DEPARTMENT: Community Development

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Current Franchise agreement and extension has expired. Existing agreement TDS pays 3% - new agreement increase fees to 5%.

Recommendation:

Final Adoption of Ordinance 762

Attachments:

- TDS Franchise Agreement Ordinance 762
-

Fiscal Impact (Finance): Yes

Increased revenue

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. 762

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 1-24-24

ORDINANCE NO. 577 _____

**AN ORDINANCE WHEREBY THE CITY OF TRUTH OR CONSEQUENCES GRANTS
~~BAJA BROADBAND OPERATING COMPANY, LLC, A DELAWARE LIMITED~~
~~LIABILITY COMPANY,~~ **TDS BROADBAND SERVICE LLC** AND ITS SUCCESSORS AND
ASSIGNS, THE NON-EXCLUSIVE FRANCHISE, LICENSE, RIGHT AND PRIVILEGE TO
CONSTRUCT, ERECT, OPERATE AND MAINTAIN ITS CABLE SYSTEM BUSINESS
WITHIN THE LIMITS OF THE CITY OF TRUTH OR CONSEQUENCES**

Whereas, it is the intent of the parties that ~~BAJA BROADBAND OPERATING COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY~~ **TDS BROADBAND SERVICE LLC**, duly authorized to do business in the State of New Mexico, continue through this franchise to construct, operate and maintain a cable system in the City of Truth or Consequences. The parties intend that the franchise incorporate the City of Truth or Consequence's lawful exercise of police power and be subject to the lawful regulation by the New Mexico Public Regulation Commission and the State of New Mexico, and to the lawful applications of the Telecommunications Act of 1996, 47 USCA § 253. It is in the best interests of the City of Truth or Consequences, its citizens and of ~~BAJA BROADBAND OPERATING COMPANY, LLC~~ **TDS BROADBAND SERVICE LLC**, that this franchise shall be granted. The parties further acknowledge that the granting of this franchise, including the use of municipal-owned utility poles, results in costs for the maintenance of the public rights-of-way in order that cable and other essential public services can be provided. In order that the public right-of-way and other facilities can be maintained for the provisioning of these services, it is necessary to recover reasonable costs from the providers of these services in the form of municipal franchise fees, and that these fees represent a legitimate cost of business to the provider, which in turn can be recovered from customers through a monthly surcharge; and,

Whereas, the City of Truth or Consequences, hereinafter called the "Grantor", hereby grants to ~~BAJA BROADBAND OPERATING COMPANY, LLC~~ **TDS BROADBAND SERVICE LLC**, hereinafter called the "Grantee", its successors and assigns, the non-exclusive franchise, license, right and privilege to operate in the City of Truth or Consequences, as well as construct, erect, equip, lease, purchase, maintain and operate, in, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places now in use or dedicated, and all extensions thereof, and additions thereto, in said Grantor, its poles, anchors, guys, wires, cables, manholes, microwave sites, underground conduits, appurtenances, fixtures, and other telecommunications facilities necessary, proper or convenient for the maintenance and operation in said Grantor of the Grantee's cable business; provided, however, that the Grantee shall locate all its transmission and distribution structures, lines and equipment within the Grantor so as not to unnecessarily obstruct the proper use of streets, alleys, public ways and public places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys, public ways and public places; and,

Whereas, Grantee owns and operates a Cable System serving the Grantor under a prior franchise; and,

Whereas, Grantee desires to continue to operate the Cable System and to provide services to its customers over the Cable System; and,

Whereas, since assuming the current franchise, Grantee has timely paid all franchise fees and has substantially complied with all terms of the franchise and City ordinances; and,

Whereas, the Grantor finds that the renewal of Grantee's franchise on the terms and conditions of this Franchise Agreement will serve the cable-related needs and interests of the Grantor taking into account the costs.

THEREFORE, BE IT ORDAINED by the Governing Body of the City of Truth or Consequences, State of New Mexico that the following ordinance is hereby approved, passed and adopted:

Section 1, Agreement Based on the above understanding, the Grantor and Grantee agree as follows:

1. Definitions

For purposes of this Franchise Agreement, the following definitions shall apply:

- (a) "Basic Cable Service" is defined by the FCC as the lowest level of cable service a subscriber can buy. It includes, at a minimum, all over-the-air television broadcast signals carried pursuant to the must-carry requirements of the Communications Act, and all public, educational, or government access channels required by the system's franchise agreement. It may include additional signals chosen by the operator.
- (b) "Cable Act" shall mean the 1984 Cable Communications Policy Act of 1984, as amended by the 1992 Cable Competition and Consumer Protection Act of 1992 and the 1996 Telecommunications Act.
- (c) "Cable Information Service" shall mean two-way digital packet switched service provided over the Cable System using a cable modem and Internet protocol, which includes Internet access, interactive services and content, information services, electronic mail, access to newsgroups, a web browser, Website hosting and other enhancements.
- (d) "Cable Programming Service" shall mean a tier including all program channels on the cable system that are not included in Basic Cable Service, but are not separately offered as per-channel or per-program services. There may be one or more tiers of cable programming service.
- (e) "Cable Service" shall mean:
 - (i) the one-way transmission to subscribers of video programming, or other programming service, and

- (ii) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (f) “Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Grantor.
- (g) “Grantor” shall mean the City of Truth or Consequences, New Mexico, and includes the City Commission and the duly elected or appointed officers, agents and employees of the Grantor.
- (h) “Facilities” shall mean any distribution or transmission component of a Cable System, including cables, conduits, converters, splice boxes, cabinets, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located by Grantee in the Rights-of-Way.
- (i) “FCC” shall mean the Federal Communications Commission.
- (j) “Grantee” shall mean ~~Baja Broadband, LLC~~ **TDS BROADBAND SERVICE LLC** or its lawful successor.
- (k) “Laws” shall mean any applicable state, Federal and local laws, ordinances and regulations.
- (l) “Local Gross Subscriber Revenues” shall mean all gross revenues of the Grantee derived from the operation of the Cable System to provide Basic Cable Service, Cable Programming Service and Premium Cable Service within the Grantor, adjusted for nonpayment. Local Gross Subscriber Revenues shall not include amounts collected for franchise fees, taxes, local origination programming or access programming fees, advertising or revenues from Non-Cable Services.
- (m) “Non-Cable Services” shall mean those services not defined as Cable Services.
- (n) “Premium Cable Service” shall mean those single-channel programming tiers provided by the cable operator for which subscribers pay the cable operator an additional fee above the Basic Cable Service charge.
- (o) “Rights-of-Way” shall mean the space on, above or below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements within the Grantor’s jurisdiction. This term shall not include any property owned by any person or agency other than the Grantor, except as provided by applicable Laws or pursuant to an agreement between the Grantor and any person.
- (p) “Telecommunications” shall mean the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

- (q) "Telecommunications Service" shall mean the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- (r) "Tier" shall mean a manner in which cable services are often provided. A tier is a category of cable service or services provided by a cable operator for which a separate rate is charged by the cable operator.

2. **Grant of Franchise - Non-Exclusive Franchise**

Formatted: French (France)

The Grantor grants to Grantee a non-exclusive franchise to operate a Cable System within the Grantor. This grant allows Grantee to construct, maintain, extend and operate its Facilities, in, through and along the Rights-of-Way for the purpose of providing Cable Services and Cable Information Services to the Grantor and its inhabitants for the full term of this Franchise Agreement, subject to the terms and conditions of this Franchise Agreement and applicable law. To the extent required by law, this grant of franchise shall also include the provision of Telecommunications Services over the Cable System, subject to certification of Grantee to provide such services, if required under applicable law

3. **Term and Renewal**

The term of this Franchise Agreement shall be for a period of ten (10) years from the effective date, unless sooner terminated as provided in this Franchise Agreement or the Cable Ordinance. Unless either party gives notice of its intent to terminate the Franchise Agreement at least 36 months prior to the expiration of the term, the term shall be automatically extended for one (1) additional five (5) year term.

4. **Franchise Area**

The Grantee is authorized to operate a Cable System throughout the entire corporate limits of the Grantor. The Grantor specifically retains the right to award other cable television franchises in the Grantor.

5. **Franchise Fee**

(a) **Three Five Percent of Local Gross Revenues**

During the term of this Franchise Agreement and any extension, Grantee shall pay to the Grantor an annual franchise fee in an amount equal to ~~three percent (3%)~~ **five percent (5%)** of the annual Local Gross Subscriber Revenues. The franchise fee shall be paid in addition to any other lawful tax payment owed to the Grantor by the Grantee. Grantee shall annually provide the Grantor with a financial report indicating the annual Local Gross Subscriber Revenues derived from subscribers within the Grantor.

If Grantor shall elect to reduce the amount of the franchise fee, such reduction shall forthwith result in a reduction of fees to subscribers in the same amount.

(b) Annual Payments

The franchise fee shall be paid annually. Grantee shall pay the applicable fee to the Grantor within ninety (90) days of the last day of the applicable calendar year for which a fee payment is due.

(c) Reasonable Access to Records

Grantee shall provide the Grantor with reasonable access to Grantee's records documenting the Gross Revenues from Cable Service as defined in this Franchise Agreement. Grantee shall comply with all reasonable requests for information in the performance of any audit. The Grantor shall agree to appropriate confidentiality protection for access to confidential or proprietary information.

6. System Configuration

(a) Cable System

- (i) Grantee shall comply with all rules and regulations of the F.C.C. with respect to the reception, carriage and distribution of signals.
- (ii) Nothing herein shall be construed to prohibit the Grantee from increasing the capability of the cable communication system or constructing the same in accord with more advanced technological standards than those proposed by the Grantee.

(b) System Design

Where feasible Cable System shall utilize a hybrid fiber-coaxial architecture and shall be designed with the capability to transmit return signals upstream. Grantee may develop, construct and operate a Cable System capable of providing non-video services such as Cable Information Service, high-speed data transmission, Internet access, voice over internet protocol phone service, and other competitive services that Grantee may activate in response to consumer and business demand for such services.

7. Services Provided to the Grantor

(a) Complimentary Basic Enhanced Cable Service

Upon request, and as a voluntary initiative, Grantee shall provide, at no recurring charge to the Grantor, one outlet of Basic Cable and Cable Programming Service to the City Hall, fire stations and municipal buildings listed on Exhibit A and public and private schools located within 150 feet of Grantee's existing Cable System. If the City Hall, fire stations or schools are located beyond 150 feet, the additional construction costs and expense exceeding 150 feet will be calculated on a time and materials basis and paid by the entity requesting service. Service drop installations for such outlets shall be provided at the cost of time and materials and paid by the requesting entity. TDS must provide one hundred twenty (120) days' notice of any location where it intends to cease the voluntary initiative and begin

Commented [RD1]: The FCC in the 2019 621 Order made clear that complimentary service, if a condition of a franchise, is a franchise fee and must count toward the federal franchise fee cap. See *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Third Report and Order*, 34 FCC Rcd 6844 (FCC 2019). The franchise fee in this agreement has been increased from 3%, to the maximum federally allowed amount of 5%. The in the 2019 621 Order, the FCC also explained that the 5% cap cannot be waived by cable operators. *Id.* at ¶ 63 n.251. Thus, in order to prevent a violation of the federal franchise fee cap, complimentary service must be voluntary and there must be a path for TDS to cease that service of its own accord.

charging for service or equipment, so that the City may notify TDS to suspend service or take such other steps as may be appropriate under applicable law.

8. Channels and Facilities for Public, Educational and Governmental Use.

(a) Access Channels

Should Grantor notify Grantee of its intent to operate a channel for noncommercial Public, Educational, and/or Governmental (PEG) use, then The Grantee shall provide Grantor with one channel for such PEG use~~noncommercial Public, Educational, and Governmental (PEG) use~~. Grantee will provide one additional channel for PEG use provided the first channel is “substantially utilized”. A PEG channel shall be considered “substantially utilized” when forty hours per week are programmed with locally produced original programming on that channel for at least three consecutive months. In determining whether a PEG channel is substantially utilized, a program may be counted not more than four times during a calendar year. Provided the first channel is substantially utilized, Grantee shall have 120 days to provide the channel after receipt of the Grantor’s written request for the additional channel.

(b) Management of PEG Channel

Grantor shall be responsible for management of the PEG channel and shall adopt rules, regulations and procedures for access channel use.

(c) Editorial Control

Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the designated access channels (except for Grantee’s own programming cablecast on those channels).

(d) Use of PEG channel capacity by Grantee

Grantee may program any unused capacity on channel capacity provided for PEG use.

(e) PEG Channel Grant

If Grantor opts to run a PEG channel pursuant to Section 8(a) above, Grantee shall provide an annual grant to the Grantor in the amount of \$3.00 per subscriber. Said grants must be used by the Grantor solely for capital costs related to support the PEG channel, or as may be permitted by applicable law. Such grant—and may be recovered by Grantee from subscribers in accord with applicable law. Grantee shall have the right, no more than once annually, to request Grantor to demonstrate how the grant fees were utilized.

9. Customer Service Standards

Grantee shall comply with the customer service standards promulgated by the FCC, which are hereby included by reference.

Commented [RD2]: The Cable Act excludes from the definition of franchise fees only those PEG fees used solely for capital expenses. PEG fees used for operating expenses count toward the cap. Accordingly, we have added language to make clear that the intent here is for this PEG grant to be for capital purposes and thus not subject to offset against the 5% franchise fee payment.

10. Discriminatory Practices Prohibited

Grantee shall make its Cable Services available to all citizens within the Cable System based on the terms of this Franchise without discrimination and shall not give any person any preference or advantage not available to all persons similarly situated, provided that nothing contained herein shall prevent Grantee from implementing credit, deposit and acceptance criteria.

11. Construction, Operation and Maintenance of the Cable System

(a) Applicable Standards

- (i) Grantee shall ensure that the Cable System is constructed, operated, and maintained in accordance with all applicable laws and industry operational and safety standards. Grantee agrees to keep all facilities in good and safe condition. If the Grantor finds that an unsafe condition exists with respect to all or any portion of the Grantee's Cable System, it may order Grantee to make repairs, and Grantee shall make all such repairs necessary to correct any such unsafe condition within a time frame specified by the Grantor. The Grantor will take into account the nature of the repairs in setting the time frame.
- (ii) Any contractor engaged by Grantee to work on the Cable System must maintain all required licenses and certifications required by applicable Laws.
- (iii) Grantee shall locate the Cable System and associated Facilities within the Grantor so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way or other public ways and places. Grantee shall not place any pole or other fixture in any public way in such a manner as to interfere with the usual travel on such public way.
- (iv) Grantee acknowledges that it will also simultaneously enter into a Pole Use Agreement with Grantor as is a condition of this agreement.
- (v) All construction, alteration, or removal of Facilities shall further conform to any special requirements imposed by the Grantor incidental to plan approval or issuance of permits. In case of disturbance of any Right-of-Way, Grantee shall, at its own cost and expense and in a manner approved by the Grantor, replace and restore the effected portion of the Right-of-Way.
- (vi) Grantee shall have the authority to routinely trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the Grantor so as to prevent the branches of such trees from coming in contact with Grantee's Facilities provided Grantee has given the Grantor at least 5 days prior written notice of the trimming activity. All tree trimming will be performed with due care for the trees and only to the extent necessary to prevent the branches from coming into contact with Grantees facilities. At the option of the Grantor, trimming may be done by it or under its supervision and direction at the expense of the Grantee. Prior notice shall not be required in the event of an emergency and Grantee shall have the authority to trim

branches and trees which have fallen onto Grantees facilities, provided written notice is later provided to the Grantor once the emergency subsides.

(b) Maintenance, Operations and Record Keeping

In maintaining and operating the Cable System, Grantee shall:

- (i) Render efficient service, locate and repair malfunctions promptly, and respond to subscriber service complaints as required by the Federal Communications Commission and this Franchise Agreement.
- (ii) Maintain a toll-free customer service telephone number, so operated that complaints and requests for repairs may be received and processed twenty four (24) hours per day, seven (7) days per week.
- (iii) Operate the Cable System continuously and schedule any planned interruptions of the cable television service, including testing and maintenance interruptions, for the shortest possible time possible and when there will be a minimum number of customers inconvenienced.
- (iv) Temporarily raise or lower its wires to permit the moving of buildings at the request of any person holding a building-moving permit issued by the Grantor. The permit holder shall pay the expense of such temporary raising or lowering of wires and the Grantee shall have the authority to require such payment in advance. The permit holder shall provide Grantee with not less than three (3) weeks advance notice to arrange for such wire changes.
- (v) Upon the reasonable request of the Grantor, file with the Clerk maps of the Grantor indicating the accurate location of all existing cables, whether leased or owned by Grantee.
- (vi) Upon the request of the Grantor, send a representative to attend a regularly scheduled City Council meeting to discuss matters related to the Cable System.

(c) Credit

If for any reason, other than through the negligence or direct and willful harm or illegal action caused by the subscriber, the entire Cable Service is not received for a period of twenty four (24) hours consecutively or increments of twenty-four (24) hour periods, the Grantee shall prorate a credit. Such credit issued to the subscriber's bill shall be implemented upon request of the subscriber.

(d) System Extensions

The Grantee shall extend its system plant to all areas within the Grantor for potential customer service when such areas provide a per ratio formula of occupied residential units per mile that equals the current overall system average. Extension of the system to subscribers in areas of less than average system density or to residents whose homes are

located more than one-hundred and fifty (150) feet from the existing cable distribution line shall be made if the subscribers agree to pay reasonable construction costs. Nothing above shall be construed to prevent Grantee from extending the service area at a faster rate or to areas of lower concentration than specified above. Grantee's obligation to provide service as indicated is subject to the Grantee's ability to obtain the necessary easements or rights-of-way required and its ability to extend its facilities at a reasonable cost.

12. Insurance

The Grantee shall maintain throughout the term of this Franchise, liability insurance insuring the Grantor and the Grantee with regard to all damages for which the Grantor and/or the Grantee may be liable, including, but not limited to, damages arising from the installation, operation, maintenance or removal of the Grantee's Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise. Grantee shall provide copies of such policies to the Grantor.

The liability insurance referred to in this section shall be in the following minimum amounts. Insurance will be maintained as follows:

(i) General Liability Insurance

\$100,000. Per Occurrence for Bodily Injury & Property Damage
\$300,000 General Aggregate for Bodily Injury & Property Damage
\$300,000 Products Aggregate for Bodily Injury & Property Damage
Commercial Automobile Insurance

\$50,000 Per Occurrence for Bodily Injury & Property Damage

(ii) Workman's compensation insurance shall also be provided as required by the laws of the State of New Mexico, as amended.

13. Rights Reserved by the Grantor

(a) Enforcement of City Ordinances

This Franchise is subject to all applicable provisions of general City ordinances. During the term of this Franchise, Grantee shall remain subject to the lawful exercise of the police power of the Grantor and to observe such reasonable regulations as the Grantor may provide, and shall comply with all applicable Laws.

(b) Police Power Authority

The Grantor may impose such other non-discriminatory and competitive neutral regulations as may be determined by the Commissioners to be in the interest of public health, safety, welfare, convenience or necessity of the Grantor.

(c) Regulation of Rights-of-Way

The Grantor may exercise all lawful control and regulation of the use of its street, alleys, bridges, and other public places and public ways and the space above and beneath them. Grantee shall pay such part of the cost of repair or replacement of streets, alleys, bridges, and other public places and public ways, as shall arise due to damage caused by Grantee due to construction or maintenance of its system and shall protect and save the Grantor harmless from all damages arising from Grantee's use.

(d) Grantor Inspection

Without notice to Grantee, the Grantor may inspect construction or installation work performed by Grantee, and make such inspections as necessary to insure compliance with this Franchise Agreement, the Cable Ordinance, Pole Utilization Agreement, and applicable Law.

(e) FCC Regulations

Subject to applicable law, the Grantor may maintain in force rules or regulations respecting the minimal requirements of signal carriage, channel capacity, number and designation of access channels, access services, technical standards, and system performance promulgated by the FCC, should that agency at any time in the future cease regulation of one or more of the above-mentioned subjects of regulation.

14. Transfer of Franchise Agreement

Grantee shall have the right hereunder to pledge or hypothecate this franchise at any time, and from time to time, and to grant any security interests in the Cable System at any time and from time to time, to secure any indebtedness or obligations from time to time owed by Grantee, whether such security interest(s) shall be a first or subordinated security interest(s); and the Grantor hereby consents to the exercise of the party's rights as a secured party in this Franchise and/or the Cable System in the event of a default by Grantee and the Grantor shall accept such secured party's performance of Grantee's obligations under this Franchise. Without in any way limiting the scope or effect of the foregoing sentence, Grantee shall also have the right to assign or otherwise transfer this Franchise to any third party upon thirty (30) days prior written notice to the Grantor, provided that Grantee shall, at the date of such notice, be in substantial compliance with the material terms and provisions hereof and provided further that such third party assignee or transferee shall have adequate technical and financial capability to comply with the foregoing terms and provisions hereof and applicable law. Upon the Grantor's receipt of Grantee's thirty (30) day notice of assignment or transfer, and prior to the effective date of the respective assignment or transfer referenced therein, the Grantor shall have the right to commence a legal proceeding to enjoin or otherwise estop such assignment or transfer, provided that, to prevail in any such action, the Grantor shall be required to demonstrate, by a preponderance of the evidence, that the third party assignee or transferee does not possess the hereinbefore specified technical and financial capability.

15. Conditions of Franchise Agreement

This Franchise Agreement is granted and accepted under and subject to all applicable Laws, orders, and regulations now or later adopted. Grantee's performance obligations shall remain subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond Grantee's control.

16. Other Franchises

The franchise granted under this Franchise Agreement is non-exclusive. Grantee acknowledges the Grantor's rights to grant one or more competing franchises. To avoid unfair competition due to disparate franchise obligations, the Grantor will, upon petition of Grantee, modify terms of this Franchise Agreement to adjust or eliminate terms that are more burdensome or costly than the terms of a competing provider's franchise. In considering a modification petition under this section, the Grantor may evaluate Grantee's request in light of the aggregate burdens and costs of each provider's franchise obligations. The Grantor shall provide Grantee with no less than two (2) weeks notice of a scheduled hearing date to consider the application of another cable telecommunications provider. In addition, if another video franchise is authorized the Grantor shall require the new franchisee to reimburse and hold harmless the Grantee from and against all costs and expenses incurred by or on behalf of the Grantee for strengthening poles, replacing poles, rearranging attachments, placing underground facilities and all other costs, including those of Grantor, the Grantee and any utilities, required by inspections, make-ready and construction of an additional cable system in the franchise area. These requirements in no way infringe on the Grantor's ability to require Grantee to accommodate Grantor owned utility requirements as set forth in any applicable pole attachment agreement.

17. Modifications Due to Changes in Laws or Regulations

The Grantor or Grantee may seek modification of this Franchise Agreement due to changes in Federal or state laws or regulations in accordance with the following procedures:

(a) Notice

The party seeking modification shall serve the other party notice of a request for modification under this Section. The notice shall specify (i) the changes in laws or regulations on which the modification request is based, and (ii) the desired modifications.

(b) Mutually Agreeable Modifications

Within 60 days of delivery of the notice, representatives of the Grantor and Grantee shall meet to develop mutually agreeable modifications to the Franchise. Any mutually agreeable modifications shall be presented to the City Commissioners for consideration.

(c) Proposals for Modifications

If the City Manager and Grantee cannot develop a mutually agreeable recommendation for modification within a reasonable time, then the City Manager and Grantee shall submit to the City Commissioners their respective proposals for modification under this Section.

(d) City Commission Action

The City Commission shall review the proposals and comments of interested parties at a public hearing. The City Commission shall then issue a decision concerning any modification to the Franchise Agreement under this Section.

(e) Appeals

Grantee may appeal under applicable law a denial of a modification proposal under this Section.

18. Indemnification

Grantee agrees to indemnify, defend and save the Grantor harmless from and against all third-party claims which may arise out of Grantee's non-performance or breach of the franchise or any negligence involving Grantee's operations thereunder in the Grantor, including all expenses reasonably incurred by the Grantor in defending itself against any claim, action or suit. The Grantor agrees to give Grantee written notice of any claim no later than 4 weeks from the date the Grantor is made aware of the occurrence and to allow Grantee, at Grantee's option, to assume the defense of the claim. This agreement to indemnify is between the Grantor and Grantee and shall not be interpreted or deemed as creating any rights in any third-party.

19. Severability

If any provision of this Franchise Agreement or its application to any person or circumstances is held invalid or is preempted, such invalidity or preemption shall not affect other provisions, sections, subsections or applications of this Franchise Agreement.

20. Rights and Duties of Grantee upon Expiration of Franchise

Upon expiration of this Franchise Agreement, whether by lapse of time, by agreement between Grantee and the Grantor, or by termination, Grantee has the right to remove its Facilities within six (6) months after such expiration or forfeiture. Grantee shall promptly restore the Rights-of-Way from which its Facilities are removed to as good condition as before removal and without cost to the Grantor.

21. Notice to Parties

Notices under this Franchise Agreement shall be in writing and shall be deemed given upon receipt by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To Grantor:
City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87901

To Grantee:
~~Baja Broadband Operating Company, LLC~~
TDS BROADBAND SERVICE LLC
525 Junction Rd.
Madison, WI 53717

Attention: City Clerk

Attn: Legal Dept.

A party may designate other addresses for providing notice by providing notice in writing of such addresses.

22. Effectiveness

This Franchise Agreement shall become effective after the following: (i) the Franchise Agreement has been duly approved by the Grantor at a public meeting; and (ii) Grantee has filed a letter of acceptance under Section 23.

23. Grantee Acceptance

Grantee shall, within ninety (90) days from the Agreement Date, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this Franchise Agreement.

Section 2. Franchise Authority. This franchise is subject to the superior power of any government authority, whether state or federal, having jurisdiction of the premises or exercising regulatory jurisdiction over the Company.

Section 3. Effective Date. This ordinance shall become effective Fifteen (15) days after its enactment; provided the Company, within those Fifteen (15) days, shall have filed with the City Clerk of the Municipality an unconditional acceptance thereof. Within ten (10) days after the filing of the acceptance, the City Clerk shall acknowledge in writing the receipt of the Company's acceptance.

Section 4 Severability Clause. If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional, illegal or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Commission, the Governing Body of the Municipality, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof regardless of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid. All ordinances and agreements or parts thereof in conflict with this ordinance are hereby repealed.

PASSED, ADOPTED AND APPROVED this ___ day of ~~November 2007~~ 20, at a regular meeting of the City Commission for the City of Truth or Consequences, State of New Mexico.

Mayor ~~Lori Montgomery~~ AMANDA FORRISTER

ATTEST:

~~Mary Penner~~ ANGELA TORRES, City Clerk

Approved as to Form by ~~Jay~~ **Jaime F. Rubin** City Attorney: _____

ACCEPTANCE OF CITY OF
TRUTH OR CONSEQUENCES ORDINANCE NO. ~~577~~ _____

WHEREAS, the City Council of the City of Truth or Consequences, New Mexico, did on the ____ day of ~~November 2007~~ _____ 20, enact Ordinance No. ~~577~~ _____ entitled: "AN ORDINANCE WHEREBY THE CITY OF TRUTH OR CONSEQUENCES GRANTS ~~BAJA BROADBAND OPERATING COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY~~ **TDS BROADBAND SERVICE LLC**, AND ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE FRANCHISE, LICENSE, RIGHT AND PRIVILEGE TO CONSTRUCT, ERECT, OPERATE AND MAINTAIN ITS CABLE BUSINESS WITHIN THE LIMITS OF THE CITY OF TRUTH OR CONSEQUENCES.", and

WHEREAS, said Ordinance was on the ____ day of ~~November 2007~~ _____ 20, approved by the City of Truth or Consequences and the seal of said City was duly thereto affixed and attested by the City Clerk.

NOW THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, ~~BAJA BROADBAND OPERATING COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY~~ **TDS BROADBAND SERVICE LLC** hereby accepts said Ordinance and files its written acceptance with the City Clerk of the City of Truth or Consequences, New Mexico, in her office.

Dated this ____ day of _____ ~~2007~~ 20.

~~BAJA BROADBAND OPERATING COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY~~ **TDS BROADBAND SERVICE LLC**

Title:

The foregoing instrument was acknowledged before me this ____ day of ~~October 2007~~ _____ 20, by _____, of ~~BAJA BROADBAND OPERATING COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY~~ **TDS BROADBAND SERVICE LLC**

_____. Notary Public My Commission Expires: _____

(Seal)

EXHIBIT “A”

**List of buildings that will receive free cable
service as provided in the ~~Baja~~ TDS BROADBAND SERVICE LLC Cable Franchise**

- City Hall
- Municipal Court
- Water Department
- Electric Department
- Library
- Civic Center
- Senior Center
- Fire Department
- Police Department
- Sanitation Department
- Waste Water Department
- Street Department
- Armory Building
- Hospital
- Fleet Maintenance Department
- Airport

ORDINANCE NO. 762

AN ORDINANCE WHEREBY THE CITY OF TRUTH OR CONSEQUENCES GRANTS, TDS BROADBAND SERVICE LLC AND ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE FRANCHISE, LICENSE, RIGHT AND PRIVILEGE TO CONSTRUCT, ERECT, OPERATE AND MAINTAIN ITS CABLE SYSTEM BUSINESS WITHIN THE LIMITS OF THE CITY OF TRUTH OR CONSEQUENCES

Whereas, it is the intent of the parties that **TDS BROADBAND SERVICE LLC**, duly authorized to do business in the State of New Mexico, continue through this franchise to construct, operate and maintain a cable system in the City of Truth or Consequences. The parties intend that the franchise incorporate the City of Truth or Consequence's lawful exercise of police power and be subject to the lawful regulation by the New Mexico Public Regulation Commission and the State of New Mexico, and to the lawful applications of the Telecommunications Act of 1996, 47 USCA § 253. It is in the best interests of the City of Truth or Consequences, its citizens and of **TDS BROADBAND SERVICE LLC**, that this franchise shall be granted. The parties further acknowledge that the granting of this franchise, including the use of municipal-owned utility poles, results in costs for the maintenance of the public rights-of-way in order that cable and other essential public services can be provided. In order that the public right-of-way and other facilities can be maintained for the provisioning of these services, it is necessary to recover reasonable costs from the providers of these services in the form of municipal franchise fees, and that these fees represent a legitimate cost of business to the provider, which in turn can be recovered from customers through a monthly surcharge; and,

Whereas, the City of Truth or Consequences, hereinafter called the "Grantor", hereby grants to **TDS BROADBAND SERVICE LLC**, hereinafter called the "Grantee", its successors and assigns, the non-exclusive franchise, license, right and privilege to operate in the City of Truth or Consequences, as well as construct, erect, equip, lease, purchase, maintain and operate, in, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places now in use or dedicated, and all extensions thereof, and additions thereto, in said Grantor, its poles, anchors, guys, wires, cables, manholes, microwave sites, underground conduits, appurtenances, fixtures, and other telecommunications facilities necessary, proper or convenient for the maintenance and operation in said Grantor of the Grantee's cable business; provided, however, that the Grantee shall locate all its transmission and distribution structures, lines and equipment within the Grantor so as not to unnecessarily obstruct the proper use of streets, alleys, public ways and public places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys, public ways and public places; and,

Whereas, Grantee owns and operates a Cable System serving the Grantor under a prior franchise; and,

Whereas, Grantee desires to continue to operate the Cable System and to provide services to its customers over the Cable System; and,

Whereas, since assuming the current franchise, Grantee has timely paid all franchise fees and has substantially complied with all terms of the franchise and City ordinances; and,

Whereas, the Grantor finds that the renewal of Grantee's franchise on the terms and conditions of this Franchise Agreement will serve the cable-related needs and interests of the Grantor taking into account the costs.

THEREFORE, BE IT ORDAINED by the Governing Body of the City of Truth or Consequences, State of New Mexico that the following ordinance is hereby approved, passed and adopted:

Section 1, Agreement Based on the above understanding, the Grantor and Grantee agree as follows:

1. Definitions

For purposes of this Franchise Agreement, the following definitions shall apply:

- (a) "Basic Cable Service" is defined by the FCC as the lowest level of cable service a subscriber can buy. It includes, at a minimum, all over-the-air television broadcast signals carried pursuant to the must-carry requirements of the Communications Act, and all public, educational, or government access channels required by the system's franchise agreement. It may include additional signals chosen by the operator.
- (b) "Cable Act" shall mean the 1984 Cable Communications Policy Act of 1984, as amended by the 1992 Cable Competition and Consumer Protection Act of 1992 and the 1996 Telecommunications Act.
- (c) "Cable Information Service" shall mean two-way digital packet switched service provided over the Cable System using a cable modem and Internet protocol, which includes Internet access, interactive services and content, information services, electronic mail, access to newsgroups, a web browser, Website hosting and other enhancements.
- (d) "Cable Programming Service" shall mean a tier including all program channels on the cable system that are not included in Basic Cable Service, but are not separately offered as per-channel or per-program services. There may be one or more tiers of cable programming service.
- (e) "Cable Service" shall mean:
 - (i) the one-way transmission to subscribers of video programming, or other programming service, and
 - (ii) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (f) "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to

provide cable service which includes video programming and which is provided to multiple subscribers within the Grantor.

- (g) "Grantor" shall mean the City of Truth or Consequences, New Mexico, and includes the City Commission and the duly elected or appointed officers, agents and employees of the Grantor.
- (h) "Facilities" shall mean any distribution or transmission component of a Cable System, including cables, conduits, converters, splice boxes, cabinets, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located by Grantee in the Rights-of-Way.
- (i) "FCC" shall mean the Federal Communications Commission.
- (j) "Grantee" shall mean **TDS BROADBAND SERVICE LLC** or its lawful successor.
- (k) "Laws" shall mean any applicable state, Federal and local laws, ordinances and regulations.
- (l) "Local Gross Subscriber Revenues" shall mean all gross revenues of the Grantee derived from the operation of the Cable System to provide Basic Cable Service, Cable Programming Service and Premium Cable Service within the Grantor, adjusted for nonpayment. Local Gross Subscriber Revenues shall not include amounts collected for franchise fees, taxes, local origination programming or access programming fees, advertising or revenues from Non-Cable Services.
- (m) "Non-Cable Services" shall mean those services not defined as Cable Services.
- (n) "Premium Cable Service" shall mean those single-channel programming tiers provided by the cable operator for which subscribers pay the cable operator an additional fee above the Basic Cable Service charge.
- (o) "Rights-of-Way" shall mean the space on, above or below the surface of the public streets, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements within the Grantor's jurisdiction. This term shall not include any property owned by any person or agency other than the Grantor, except as provided by applicable Laws or pursuant to an agreement between the Grantor and any person.
- (p) "Telecommunications" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- (q) "Telecommunications Service" shall mean the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

- (r) "Tier" shall mean a manner in which cable services are often provided. A tier is a category of cable service or services provided by a cable operator for which a separate rate is charged by the cable operator.

2. Grant of Franchise - Non-Exclusive Franchise

The Grantor grants to Grantee a non-exclusive franchise to operate a Cable System within the Grantor. This grant allows Grantee to construct, maintain, extend and operate its Facilities, in, through and along the Rights-of-Way for the purpose of providing Cable Services and Cable Information Services to the Grantor and its inhabitants for the full term of this Franchise Agreement, subject to the terms and conditions of this Franchise Agreement and applicable law. To the extent required by law, this grant of franchise shall also include the provision of Telecommunications Services over the Cable System, subject to certification of Grantee to provide such services, if required under applicable law

3. Term and Renewal

The term of this Franchise Agreement shall be for a period of ten (10) years from the effective date, unless sooner terminated as provided in this Franchise Agreement or the Cable Ordinance. Unless either party gives notice of its intent to terminate the Franchise Agreement at least 36 months prior to the expiration of the term, the term shall be automatically extended for one (1) additional five (5) year term.

4. Franchise Area

The Grantee is authorized to operate a Cable System throughout the entire corporate limits of the Grantor. The Grantor specifically retains the right to award other cable television franchises in the Grantor.

5. Franchise Fee

(a) Five Percent of Local Gross Revenues

During the term of this Franchise Agreement and any extension, Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Local Gross Subscriber Revenues. The franchise fee shall be paid in addition to any other lawful tax payment owed to the Grantor by the Grantee. Grantee shall annually provide the Grantor with a financial report indicating the annual Local Gross Subscriber Revenues derived from subscribers within the Grantor.

If Grantor shall elect to reduce the amount of the franchise fee, such reduction shall forthwith result in a reduction of fees to subscribers in the same amount.

(b) Annual Payments

The franchise fee shall be paid annually. Grantee shall pay the applicable fee to the Grantor within ninety (90) days of the last day of the applicable calendar year for which a fee payment is due.

(c) Reasonable Access to Records

Grantee shall provide the Grantor with reasonable access to Grantee's records documenting the Gross Revenues from Cable Service as defined in this Franchise Agreement. Grantee shall comply with all reasonable requests for information in the performance of any audit. The Grantor shall agree to appropriate confidentiality protection for access to confidential or proprietary information.

6. System Configuration

(a) Cable System

- (i) Grantee shall comply with all rules and regulations of the F.C.C. with respect to the reception, carriage and distribution of signals.
- (ii) Nothing herein shall be construed to prohibit the Grantee from increasing the capability of the cable communication system or constructing the same in accord with more advanced technological standards than those proposed by the Grantee.

(b) System Design

Where feasible Cable System shall utilize a hybrid fiber-coaxial architecture and shall be designed with the capability to transmit return signals upstream. Grantee may develop, construct and operate a Cable System capable of providing non-video services such as Cable Information Service, high-speed data transmission, Internet access, voice over internet protocol phone service, and other competitive services that Grantee may activate in response to consumer and business demand for such services.

7. Services Provided to the Grantor

(a) Complimentary Basic Enhanced Cable Service

Upon request, and as a voluntary initiative, Grantee shall provide, at no recurring charge to the Grantor, one outlet of Basic Cable and Cable Programming Service to the City Hall, fire stations and municipal buildings listed on Exhibit A and public and private schools located within 150 feet of Grantee's existing Cable System. If the City Hall, fire stations or schools are located beyond 150 feet, the additional construction costs and expense exceeding 150 feet will be calculated on a time and materials basis and paid by the entity requesting service. Service drop installations for such outlets shall be provided at the cost of time and materials and paid by the requesting entity. TDS must provide one hundred twenty (120) days' notice of any location where it intends to cease the voluntary initiative and begin charging for service or equipment, so that the City may notify TDS to suspend service or take such other steps as may be appropriate under applicable law.

8. Channels and Facilities for Public, Educational and Governmental Use.

(a) Access Channels

Should Grantor notify Grantee of its intent to operate a channel for noncommercial Public, Educational, and/or Governmental (PEG) use, then Grantee shall provide Grantor with one channel for such PEG use. Grantee will provide one additional channel for PEG use provided the first channel is "substantially utilized". A PEG channel shall be considered "substantially utilized" when forty hours per week are programmed with locally produced original programming on that channel for at least three consecutive months. In determining whether a PEG channel is substantially utilized, a program may be counted not more than four times during a calendar year. Provided the first channel is substantially utilized, Grantee shall have 120 days to provide the channel after receipt of the Grantor's written request for the additional channel.

(b) Management of PEG Channel

Grantor shall be responsible for management of the PEG channel and shall adopt rules, regulations and procedures for access channel use.

(c) Editorial Control

Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the designated access channels (except for Grantee's own programming cablecast on those channels).

(d) Use of PEG channel capacity by Grantee

Grantee may program any unused capacity on channel capacity provided for PEG use.

(e) PEG Channel Grant

If Grantor opts to run a PEG channel pursuant to Section 8(a) above, Grantee shall provide an annual grant to the Grantor in the amount of \$3.00 per subscriber. Said grants must be used by the Grantor solely for capital costs related to the PEG channel, or as may be permitted by applicable law. Such grant may be recovered by Grantee from subscribers in accord with applicable law. Grantee shall have the right, no more than once annually, to request Grantor to demonstrate how the grant fees were utilized.

9. Customer Service Standards

Grantee shall comply with the customer service standards promulgated by the FCC, which are hereby included by reference.

10. Discriminatory Practices Prohibited

Grantee shall make its Cable Services available to all citizens within the Cable System based on the terms of this Franchise without discrimination and shall not give any person any preference or advantage not available to all persons similarly situated, provided that nothing contained herein shall prevent Grantee from implementing credit, deposit and acceptance criteria.

11. Construction, Operation and Maintenance of the Cable System

(a) Applicable Standards

- (i) Grantee shall ensure that the Cable System is constructed, operated, and maintained in accordance with all applicable laws and industry operational and safety standards. Grantee agrees to keep all facilities in good and safe condition. If the Grantor finds that an unsafe condition exists with respect to all or any portion of the Grantee's Cable System, it may order Grantee to make repairs, and Grantee shall make all such repairs necessary to correct any such unsafe condition within a time frame specified by the Grantor. The Grantor will take into account the nature of the repairs in setting the time frame.
- (ii) Any contractor engaged by Grantee to work on the Cable System must maintain all required licenses and certifications required by applicable Laws.
- (iii) Grantee shall locate the Cable System and associated Facilities within the Grantor so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way or other public ways and places. Grantee shall not place any pole or other fixture in any public way in such a manner as to interfere with the usual travel on such public way.
- (iv) Grantee acknowledges that it will also simultaneously enter into a Pole Use Agreement with Grantor as is a condition of this agreement.
- (v) All construction, alteration, or removal of Facilities shall further conform to any special requirements imposed by the Grantor incidental to plan approval or issuance of permits. In case of disturbance of any Right-of-Way, Grantee shall, at its own cost and expense and in a manner approved by the Grantor, replace and restore the effected portion of the Right-of-Way.
- (vi) Grantee shall have the authority to routinely trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the Grantor so as to prevent the branches of such trees from coming in contact with Grantee's Facilities provided Grantee has given the Grantor at least 5 days prior written notice of the trimming activity. All tree trimming will be performed with due care for the trees and only to the extent necessary to prevent the branches from coming into contact with Grantees facilities. At the option of the Grantor, trimming may be done by it or under its supervision and direction at the expense of the Grantee. Prior notice shall not be required in the event of an emergency and Grantee shall have the authority to trim branches and trees which have fallen onto Grantees facilities, provided written notice is later provided to the Grantor once the emergency subsides.

(b) Maintenance, Operations and Record Keeping

In maintaining and operating the Cable System, Grantee shall:

- (i) Render efficient service, locate and repair malfunctions promptly, and respond to subscriber service complaints as required by the Federal Communications Commission and this Franchise Agreement.
- (ii) Maintain a toll-free customer service telephone number, so operated that complaints and requests for repairs may be received and processed twenty four (24) hours per day, seven (7) days per week.
- (iii) Operate the Cable System continuously and schedule any planned interruptions of the cable television service, including testing and maintenance interruptions, for the shortest possible time possible and when there will be a minimum number of customers inconvenienced.
- (iv) Temporarily raise or lower its wires to permit the moving of buildings at the request of any person holding a building-moving permit issued by the Grantor. The permit holder shall pay the expense of such temporary raising or lowering of wires and the Grantee shall have the authority to require such payment in advance. The permit holder shall provide Grantee with not less than three (3) weeks advance notice to arrange for such wire changes.
- (v) Upon the reasonable request of the Grantor, file with the Clerk maps of the Grantor indicating the accurate location of all existing cables, whether leased or owned by Grantee.
- (vi) Upon the request of the Grantor, send a representative to attend a regularly scheduled City Council meeting to discuss matters related to the Cable System.

(c) Credit

If for any reason, other than through the negligence or direct and willful harm or illegal action caused by the subscriber, the entire Cable Service is not received for a period of twenty four (24) hours consecutively or increments of twenty-four (24) hour periods, the Grantee shall prorate a credit. Such credit issued to the subscriber's bill shall be implemented upon request of the subscriber.

(d) System Extensions

The Grantee shall extend its system plant to all areas within the Grantor for potential customer service when such areas provide a per ratio formula of occupied residential units per mile that equals the current overall system average. Extension of the system to subscribers in areas of less than average system density or to residents whose homes are located more than one-hundred and fifty (150) feet from the existing cable distribution line shall be made if the subscribers agree to pay reasonable construction costs. Nothing above shall be construed to prevent Grantee from extending the service area at a faster rate or to areas of lower concentration than specified above. Grantee's obligation to provide service as indicated is subject to the Grantee's ability to obtain the necessary easements or rights-of-way required and its ability to extend its facilities at a reasonable cost.

12. Insurance

The Grantee shall maintain throughout the term of this Franchise, liability insurance insuring the Grantor and the Grantee with regard to all damages for which the Grantor and/or the Grantee may be liable, including, but not limited to, damages arising from the installation, operation, maintenance or removal of the Grantee's Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise. Grantee shall provide copies of such policies to the Grantor.

The liability insurance referred to in this section shall be in the following minimum amounts. Insurance will be maintained as follows:

(i) General Liability Insurance

\$100,000. Per Occurrence for Bodily Injury & Property Damage
\$300,000 General Aggregate for Bodily Injury & Property Damage
\$300,000 Products Aggregate for Bodily Injury & Property Damage
Commercial Automobile Insurance

\$50,000 Per Occurrence for Bodily Injury & Property Damage

(ii) Workman's compensation insurance shall also be provided as required by the laws of the State of New Mexico, as amended.

13. Rights Reserved by the Grantor

(a) Enforcement of City Ordinances

This Franchise is subject to all applicable provisions of general City ordinances. During the term of this Franchise, Grantee shall remain subject to the lawful exercise of the police power of the Grantor and to observe such reasonable regulations as the Grantor may provide, and shall comply with all applicable Laws.

(b) Police Power Authority

The Grantor may impose such other non-discriminatory and competitive neutral regulations as may be determined by the Commissioners to be in the interest of public health, safety, welfare, convenience or necessity of the Grantor.

(c) Regulation of Rights-of-Way

The Grantor may exercise all lawful control and regulation of the use of its street, alleys, bridges, and other public places and public ways and the space above and beneath them. Grantee shall pay such part of the cost of repair or replacement of streets, alleys, bridges, and other public places and public ways, as shall arise due to damage caused by Grantee due

to construction or maintenance of its system and shall protect and save the Grantor harmless from all damages arising from Grantee's use.

(d) Grantor Inspection

Without notice to Grantee, the Grantor may inspect construction or installation work performed by Grantee, and make such inspections as necessary to insure compliance with this Franchise Agreement, the Cable Ordinance, Pole Utilization Agreement, and applicable Law.

(e) FCC Regulations

Subject to applicable law, the Grantor may maintain in force rules or regulations respecting the minimal requirements of signal carriage, channel capacity, number and designation of access channels, access services, technical standards, and system performance promulgated by the FCC, should that agency at any time in the future cease regulation of one or more of the above-mentioned subjects of regulation.

14. Transfer of Franchise Agreement

Grantee shall have the right hereunder to pledge or hypothecate this franchise at any time, and from time to time, and to grant any security interests in the Cable System at any time and from time to time, to secure any indebtedness or obligations from time to time owed by Grantee, whether such security interest(s) shall be a first or subordinated security interest(s); and the Grantor hereby consents to the exercise of the party's rights as a secured party in this Franchise and/or the Cable System in the event of a default by Grantee and the Grantor shall accept such secured party's performance of Grantee's obligations under this Franchise. Without in any way limiting the scope or effect of the foregoing sentence, Grantee shall also have the right to assign or otherwise transfer this Franchise to any third party upon thirty (30) days prior written notice to the Grantor, provided that Grantee shall, at the date of such notice, be in substantial compliance with the material terms and provisions hereof and provided further that such third party assignee or transferee shall have adequate technical and financial capability to comply with the foregoing terms and provisions hereof and applicable law. Upon the Grantor's receipt of Grantee's thirty (30) day notice of assignment or transfer, and prior to the effective date of the respective assignment or transfer referenced therein, the Grantor shall have the right to commence a legal proceeding to enjoin or otherwise estop such assignment or transfer, provided that, to prevail in any such action, the Grantor shall be required to demonstrate, by a preponderance of the evidence, that the third party assignee or transferee does not possess the hereinbefore specified technical and financial capability.

15. Conditions of Franchise Agreement

This Franchise Agreement is granted and accepted under and subject to all applicable Laws, orders, and regulations now or later adopted. Grantee's performance obligations shall remain subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond Grantee's control.

16. Other Franchises

The franchise granted under this Franchise Agreement is non-exclusive. Grantee acknowledges the Grantor's rights to grant one or more competing franchises. To avoid unfair competition due to disparate franchise obligations, the Grantor will, upon petition of Grantee, modify terms of this Franchise Agreement to adjust or eliminate terms that are more burdensome or costly than the terms of a competing provider's franchise. In considering a modification petition under this section, the Grantor may evaluate Grantee's request in light of the aggregate burdens and costs of each provider's franchise obligations. The Grantor shall provide Grantee with no less than two (2) weeks notice of a scheduled hearing date to consider the application of another cable telecommunications provider. In addition, if another video franchise is authorized the Grantor shall require the new franchisee to reimburse and hold harmless the Grantee from and against all costs and expenses incurred by or on behalf of the Grantee for strengthening poles, replacing poles, rearranging attachments, placing underground facilities and all other costs, including those of Grantor, the Grantee and any utilities, required by inspections, make-ready and construction of an additional cable system in the franchise area. These requirements in no way infringe on the Grantor's ability to require Grantee to accommodate Grantor owned utility requirements as set forth in any applicable pole attachment agreement.

17. Modifications Due to Changes in Laws or Regulations

The Grantor or Grantee may seek modification of this Franchise Agreement due to changes in Federal or state laws or regulations in accordance with the following procedures:

(a) Notice

The party seeking modification shall serve the other party notice of a request for modification under this Section. The notice shall specify (i) the changes in laws or regulations on which the modification request is based, and (ii) the desired modifications.

(b) Mutually Agreeable Modifications

Within 60 days of delivery of the notice, representatives of the Grantor and Grantee shall meet to develop mutually agreeable modifications to the Franchise. Any mutually agreeable modifications shall be presented to the City Commissioners for consideration.

(c) Proposals for Modifications

If the City Manager and Grantee cannot develop a mutually agreeable recommendation for modification within a reasonable time, then the City Manager and Grantee shall submit to the City Commissioners their respective proposals for modification under this Section.

(d) City Commission Action

The City Commission shall review the proposals and comments of interested parties at a public hearing. The City Commission shall then issue a decision concerning any modification to the Franchise Agreement under this Section.

(e) Appeals

Grantee may appeal under applicable law a denial of a modification proposal under this Section.

18. Indemnification

Grantee agrees to indemnify, defend and save the Grantor harmless from and against all third-party claims which may arise out of Grantee's non-performance or breach of the franchise or any negligence involving Grantee's operations thereunder in the Grantor, including all expenses reasonably incurred by the Grantor in defending itself against any claim, action or suit. The Grantor agrees to give Grantee written notice of any claim no later than 4 weeks from the date the Grantor is made aware of the occurrence and to allow Grantee, at Grantee's option, to assume the defense of the claim. This agreement to indemnify is between the Grantor and Grantee and shall not be interpreted or deemed as creating any rights in any third-party.

19. Severability

If any provision of this Franchise Agreement or its application to any person or circumstances is held invalid or is preempted, such invalidity or preemption shall not affect other provisions, sections, subsections or applications of this Franchise Agreement.

20. Rights and Duties of Grantee upon Expiration of Franchise

Upon expiration of this Franchise Agreement, whether by lapse of time, by agreement between Grantee and the Grantor, or by termination, Grantee has the right to remove its Facilities within six (6) months after such expiration or forfeiture. Grantee shall promptly restore the Rights-of-Way from which its Facilities are removed to as good condition as before removal and without cost to the Grantor.

21. Notice to Parties

Notices under this Franchise Agreement shall be in writing and shall be deemed given upon receipt by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To Grantor:
City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87901

Attention: City Clerk

To Grantee:

TDS BROADBAND SERVICE LLC
525 Junction Rd.
Madison, WI 53717

Attn: Legal Dept.

A party may designate other addresses for providing notice by providing notice in writing of such addresses.

22. Effectiveness

This Franchise Agreement shall become effective after the following: (i) the Franchise Agreement has been duly approved by the Grantor at a public meeting; and (ii) Grantee has filed a letter of acceptance under Section 23.

23. Grantee Acceptance

Grantee shall, within ninety (90) days from the Agreement Date, file with the City Clerk its written acceptance of all the terms, conditions, and provisions of this Franchise Agreement.

Section 2. Franchise Authority. This franchise is subject to the superior power of any government authority, whether state or federal, having jurisdiction of the premises or exercising regulatory jurisdiction over the Company.

Section 3. Effective Date. This ordinance shall become effective Fifteen (15) days after its enactment; provided the Company, within those Fifteen (15) days, shall have filed with the City Clerk of the Municipality an unconditional acceptance thereof. Within ten (10) days after the filing of the acceptance, the City Clerk shall acknowledge in writing the receipt of the Company's acceptance.

Section 4 Severability Clause. If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional, illegal or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Commission, the Governing Body of the Municipality, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof regardless of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid. All ordinances and agreements or parts thereof in conflict with this ordinance are hereby repealed.

PASSED, ADOPTED AND APPROVED this ____ day of _____ 20____, at a regular meeting of the City Commission for the City of Truth or Consequences, State of New Mexico.

Mayor , Rolf Hechler

ATTEST:

ANGELA TORRES, City Clerk

Approved as to Form by Jaime F. Rubin City Attorney: _____

**ACCEPTANCE OF CITY OF
TRUTH OR CONSEQUENCES ORDINANCE NO. ____**

WHEREAS, the City Council of the City of Truth or Consequences, New Mexico, did on the ____ day of _____ 20____, enact Ordinance No. ____ entitled: "AN ORDINANCE WHEREBY THE CITY OF TRUTH OR CONSEQUENCES GRANTS **TDS BROADBAND SERVICE LLC**, AND ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE FRANCHISE, LICENSE, RIGHT AND PRIVILEGE TO CONSTRUCT, ERECT, OPERATE AND MAINTAIN ITS CABLE BUSINESS WITHIN THE LIMITS OF THE CITY OF TRUTH OR CONSEQUENCES.", and

WHEREAS, said Ordinance was on the ____ day of _____ 20____, approved by the City of Truth or Consequences and the seal of said City was duly thereto affixed and attested by the City Clerk.

NOW THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, **TDS BROADBAND SERVICE LLC** hereby accepts said Ordinance and files its written acceptance with the City Clerk of the City of Truth or Consequences, New Mexico, in her office.

Dated this ____ day of _____ 20____.

TDS BROADBAND SERVICE LLC

Title:

The foregoing instrument was acknowledged before me this ____ day of _____ 20____, by _____, of **TDS BROADBAND SERVICE LLC**

Notary Public My Commission Expires: _____

(Seal)

EXHIBIT "A"

**List of buildings that will receive free cable
service as provided in the TDS BROADBAND SERVICE LLC Cable Franchise**

- City Hall
- Municipal Court
- Water Department
- Electric Department
- Library
- Civic Center
- Senior Center
- Fire Department
- Police Department
- Sanitation Department
- Waste Water Department
- Street Department
- Armory Building
- Hospital
- Fleet Maintenance Department
- Airport



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: G.1

SUBJECT: Resolution No. 31 23/24 Budget Adjustment Request

DEPARTMENT: Finance Department

DATE SUBMITTED: January 17, 2024

SUBMITTED BY: Kerin Salcedo, Accounting Officer

WHO WILL PRESENT THE ITEM: Traci Alvarez, Assistant City Manager

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. 31 23/24 Budget Adjustment Requests for Fiscal Year 2023-2024

Attachments:

Resolution No 31 23/24

- Schedule of Budget Adjustments, Supporting Documentation

Fiscal Impact (Finance): Yes

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

Legal Review (City Attorney): N/A

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC agendas 1-24-24



RESOLUTION NO. 31 23/24

A RESOLUTION REQUESTING FINAL BUDGET ADJUSTMENTS IN THE REVENUE AND EXPENDITURE BUDGET FOR FISCAL YEAR 2023-2024.

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 2023-2024; 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 **24th day of January, 2024**.

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: 2023-24 1/24/2024
DFA Resolution Number: 31 23/24
BAR NUMBER 5

DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or TRANSFER (TO or FROM)	APPROVED BUDGET	ADJUSTMENT / INCREASE	ADJUSTMENT / DECREASE	ADJUSTED BUDGET	PURPOSE
1	101	101-1099-49930	Transfer Out	Expense	\$ 920,320.00	\$ 5,000		\$ 925,320	CDBG Comprehensive Plan Grant
1	314	314-7030-32375	Other State Grants	Revenue		\$ 50,000		\$ 50,000	CDBG Comprehensive Plan Grant Approved 01/03/24 CC Meeting
1	314	314-7030-48598	Professional Services	Expense		\$ 55,000		\$ 55,000	CDBG Comprehensive Plan Grant Approved 01/03/24 CC Meeting
1	314	314-7030-39935	Transfer In	Revenue	\$ -	\$ 5,000		\$ 5,000	CDBG Comprehensive Plan Grant Approved 01/03/24 CC Meeting
2	380	380-7002-38387	Loan Proceeds	Revenue	\$ 502,565		\$ (20,542)	\$ 482,023	DW-4794 WA System Improv
2	380	380-7002-80860	Infrastructure	Expense	\$ 1,123,107		\$ (62,615)	\$ 1,060,492	DW-4794 WA System Improv

ATTEST:

Angela Torres, Clerk-Treasurer (Date)

Rolf Hechler, Mayor (Date)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.1

SUBJECT: Discussion Action – Authorizing Code Enforcement Officer Tyler Knull as designated representative to act on behalf of the City Manager and Designated Zoning Official for enforcement of the Municipal Code for Property and Building Violations and Appoint Tyler Knull as a Deputy of the T or C Fire Department for Fire Inspections

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

For Municipal Code Property and Building Violations that require the Manager or his/her designated representative and/or specify it is the duty of the designated Zoning Administrator or his/her designee, to enforce various sections of the Municipal Code, staff wishes to designate Code Enforcement Officer Tyler Knull to act on their behalf.

Per the municipal code (Sec. 5-73), the fire chief may appoint a deputy of the Fire Department. The deputy will have the authority to do fire inspections on behalf of the Fire Chief

Recommendation:

Authorize Code Enforcement Officer Tyler Knull to act on behalf of the City Manager, Designated Zoning Official and Fire Chief for the enforcement of Municipal Code

Attachments:

- Applicable Sections of Municipal Code

Fiscal Impact (Finance): N/A

Legal Review (City Attorney): N/A

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-24-24

Sec. 11-2-1. Administrative Official.

This Code shall be administered by the Building Inspector for the City until a Zoning Official is specifically designated by the City Commission. Throughout this Code, "designated Zoning Official" shall mean the Building Inspector, or a zoning official subsequently designated by the City Commission. Except as otherwise provided in this Code, the designated Zoning Administrator shall:

- A. Administer and enforce this Code;
- B. Receive applications;
- C. Inspect premises for Code compliance;
- D. Issue permits and certifications;

No building permit or certificate of occupancy shall be issued by the designated Zoning Administrator except where compliance with the provisions of this Code have been met.

ARTICLE IV. DANGEROUS AND UNSAFE STRUCTURES¹

Sec. 4-226. Penalty.

Violations of this article are punishable as provided in section 1-10.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-227. Prohibited.

It shall be unlawful for any person or persons, corporation or entity to:

- (1) Maintain or permit the existence of any dangerous or unsafe building or structure within the city;
- (2) Fail to repair, remodel or renovate any building or structure designated as dangerous or unsafe, or any building moved within the city;
- (3) For the owner, occupant, or person in custody of any dangerous building to allow or permit the same to remain in a dangerous condition and to permit any building or structure to be occupied while it is or remains in a dangerous condition.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-228. Unsafe structures or premises.

An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-229. Dangerous structures or premises.

For the purpose of this Code, any building, structure or premises that have any or all of the conditions or defects described below shall be considered dangerous:

- (1) Any door which is unsecured or any door, aisle, passageway, stairway or other means of egress, including windows, that does not conform to the current New Mexico Building Code and Fire Code as adopted by the authority having jurisdiction relating to the requirement for existing buildings.

¹Editor's note(s)—Section 1 of Ord. No. 639, adopted Sept. 24, 2013, repealed former art. IV, §§ 4-226—4-237, which pertained to dangerous buildings, and derived from the 1962 Code, §§ 6-6-1—6-6-12. Subsequently, Ord. No. 640, § 1, adopted Sept. 24, 2013, added new provisions as herein set out.

Cross reference(s)—Health and sanitation, ch. 6.

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- (2) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
 - (3) Any portion of a building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.
 - (4) Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
 - (5) Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads required by the New Mexico Building Code.
 - (6) The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
 - (7) The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
 - (8) Any building or structure has been constructed, exists or is maintained in violation of any specific requirements or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
 - (9) A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the enforcement officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
 - (10) Any portion of a building remaining on a site after a demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-230. Determination.

When the building inspector suspects that a building or structure may be unsafe or dangerous, he shall perform a complete inspection and generate a report on the condition of the structure.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-231. Procedure to abate.

- (a) Whenever the building inspector shall be of the opinion that any building or structure in the city is a dangerous or unsafe building, the building inspector shall prepare a written notice to be served upon the legal owner of record thereof, and upon the occupant thereof, if any, by certified mail or by personal service

to the last known address. Such notice shall state that the building has been declared to be in a dangerous condition, and that such dangerous condition(s) must be removed or remedied by repairing or altering the building or by demolishing it; and that the condition must be remedied within a fixed period of time not to exceed 90 days.

- (b) Based on the report submitted by the aforementioned official, the city commission may, by formal resolution, find the property to be dangerous. A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or premises. If the owner, as shown by the real estate records of the county clerk, occupant or agent in charge of the building, structure or premises cannot be served within the city, a copy of the resolution shall be posted on the building, structure or premises and a copy of the resolution shall be published one time.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-232. Removal and appeal.

- (a) Within ten days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or premises shall commence removing the building, structure, ruin, rubbish, wreckage or debris, or file a written objection with the city clerk asking for a hearing before the governing body of the municipality.
- (b) If a written objection is filed as required in this section, the city shall:
 - (1) Fix a date for a hearing on its resolution and the objection;
 - (2) Consider all evidence for and against the removal resolution at the hearing; and
 - (3) Determine if its resolution should be enforced or rescinded.
- (c) Any person aggrieved by the determination of the governing body may appeal to the district court by:
 - (1) Giving notice of appeal to the governing body within five days after the determination made by the governing body; and
 - (2) Filing a petition in the district court within 20 days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.
- (d) If the owner, occupant or agent in charge of the building, structure or premises fails to commence removing the building, structure, ruins, rubbish, wreckage or debris:
 - (1) Within ten days of being served a copy of the resolution or of the posting and publishing of the resolution; or
 - (2) Within five days of the determination by the governing body that the resolution shall be enforced; or
 - (3) After the district court enters judgment sustaining the determination of the governing body, the municipality may remove the building, structure, ruins, rubbish, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal shall constitute a lien against the building, structure, ruin, rubbish, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided in sections 3-36-1 through 3-36-6 NMSA 1978.
- (e) The municipality may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.

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- (f) Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-233. Recording of lien; interest rate on lien.

- (a) It shall be the duty of the city clerk to make out, sign, attest, file and record in the office of the county clerk, a claim of lien upon premises described in any delinquent assessment roll.
- (b) Such lien shall bear interest at the rate of eight percent per annum from the date of filing until paid, together with reasonable attorney fees for the foreclosure of same.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-234. Emergency action.

In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless a dangerous building is immediately repaired, vacated, or demolished, the building inspector shall report such facts to the city manager or his designee, and the city manager or his designee shall cause the immediate repair, vacation, or demolition of such dangerous building. The costs of such emergency, repair, vacation, or demolition of such dangerous building shall be collected in the same manner as provided in sections 4-232 and 4-233.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-235. Owner is absent from the city.

In the cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the city, all notices or orders provided for in this article shall be sent by registered mail to the owner, occupant, mortgagee, lessee, and all other persons having an interest in the building, as shown by the land records of the Recorder of Deeds of the County of Sierra, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the dangerous building to which it relates. Such mailing and posting shall be deemed adequate service.

(Ord. No. 640, § 1, 9-24-13)

Secs. 4-236—4-300. Reserved.

- CODE OF ORDINANCES
Chapter 6 - HEALTH AND SANITATION
ARTICLE II. INSECT AND RODENT CONTROL

ARTICLE II. INSECT AND RODENT CONTROL¹

Sec. 6-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Extermination means the control and elimination of insects or rodents by eliminating their harborage, or removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, or trapping; or by any other recognized and legal insect or rodent control method approved by the Manager.

Infestation means the presence of any insects or rodents of such kind or in such numbers as to create a potential health hazard or nuisance.

Insects mean members of Class Insecta and such other members of the Phylum Arthropoda as may be considered dangerous or pestiferous by the Manager.

Person in control means the owner or part owner of a building, lot, or premises; the agent or occupant of a building, lot, or premises, or any other person who has the use of or control of a building, lot, or premises or any part thereof.

Rodents mean members of the Order Rodentia and such members of the Order Lagomorpha as may be considered dangerous or pestiferous by the Manager.

(Code 1962, § 8-6-1; Ord. No. 645, § 1, 11-12-13)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 6-22. Inspection of buildings, premises, and vacant lots.

The Manager is hereby authorized to make such inspections of buildings, lots and premises as he deems necessary to investigate and abate insect or rodent infestations or harborages. For the purpose of making such inspections, the Manager is hereby authorized to enter, examine, or survey such buildings, lots and premises at all reasonable times. Such entry shall be made in a manner as to cause the least possible inconvenience to the person in control, and the Manager shall obtain an order for this purpose from a court of competent jurisdiction if entry is denied or resisted.

(Code 1962, § 8-6-2; Ord. No. 645, § 1, 11-12-13)

Sec. 6-23. Enforcement; serving of notices and order; hearings.

Whenever it appears to the Manager that an insect or rodent harborage or infestation exists, he shall issue and cause to be served on the person in control of complaint stating the charges in that respect and specifying a reasonable amount of time for abatement. If, after the stated period of time, the Manager finds that such condition has not been abated, he shall serve notice that a hearing will be held before the Manager not less than

¹Editor's note(s)—Section 1 of Ord. No. 645, adopted Nov. 12, 2013, renumbered former art. IV, §§ 6-66—6-70 as art. II, §§ 6-21—6-25.

three days nor more than seven days after receipt of such notice by the person in control. If after such notice and an opportunity for a hearing, the Manager determines that the complaint is justified, the person in control shall be deemed to be in violation of the provisions of this article.

(Code 1962, § 8-6-3; Ord. No. 645, § 1, 11-12-13)

Sec. 6-24. Extermination required; harborage not permitted.

- (a) All buildings, lots, and premises shall be kept free of infestation or harborage. The person in control shall not allow the accumulation of water, refuse, animal wastes, garbage, trash, or other harborage.
- (b) When any building, lot, or premises is so infested or subject to infestation, the person in control shall utilize extermination measures as specified by the Manager.
- (c) When the person in control of any building, lot, or premises fails to abate the nuisance of harborage or infestation, the Manager shall be authorized to go upon the premises and abate the nuisance of harborage or infestation. The cost of such abatement shall be borne by the person in control who failed to abate the nuisance under the terms of this article. If payment is not received within 60 days of receipt of the bill for such costs, the Manager may proceed to record a lien on the affected property for the amount due and owing.

(Code 1962, § 8-6-4; Ord. No. 645, § 1, 11-12-13)

Sec. 6-25. Enforcement of article.

The Manager or his designated representative shall be responsible for the enforcement of this article. Rules and regulations to carry out the intent and purpose of this article shall be prescribed by the Manager pursuant to standards created in this article.

(Code 1962, § 8-6-5; Ord. No. 645, § 1, 11-12-13)

Secs. 6-26—6-30. Reserved.

ARTICLE III. SOIL AND SURFACE WATER PROTECTION²

Sec. 6-31. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Cesspool, holding tank, septic system, and sewage as defined in the Uniform Plumbing Code, section 4-66.

²Editor's note(s)—Section 1 of Ord. No. 644, adopted Nov. 12, 2013, repealed former art. III, §§ 6-46—6-50, which pertained to weeds, and derived from the 1962 Code, § 9-11-3; Ord. No. 378, adopted March 11, 1991; and Ord. No. 423, § 1, adopted May 8, 1995.

Subsequently, section 1 of Ord. No. 645, adopted Nov. 12, 2013, renumbered former art. VI, §§ 6-92—6-95 as art. III, §§ 6-31—6-34.

Hazardous material is any material as defined under the terms "hazardous production material," "health hazard," or "highly toxic material" in the Uniform Building Code, section 4-46.

(Ord. No. 422, § 1, 5-8-95; Ord. No. 645, § 1, 11-12-13)

Sec. 6-32. Unlawful deposit of sewage or hazardous material.

- (a) It is unlawful for any occupant or owner of property to deposit or cause to be deposited untreated sewage or hazardous material upon the surface of the ground or in a manner which may contaminate surface water.
- (b) It is unlawful for any occupant or owner of property to deposit or cause to be deposited untreated sewage or hazardous material into a holding tank, cesspool or septic system which has not received proper approval from both the state construction industries division of the regulation and licensing department and the state environment department.

(Ord. No. 422, § 5-8-95; Ord. No. 645, § 1, 11-12-13)

Sec. 6-33. Enforcement of this article.

The Manager or his designated representative shall be responsible for the enforcement of this article. Regulations or administrative policies to carry out the intent and purpose of this article shall be prescribed by the City Manager pursuant to standards created in this article.

(Ord. No. 422, § 1, 5-8-95; Ord. No. 645, § 1, 11-12-13)

Sec. 6-34. Penalty for violation of this article.

Any person violating any provision of this article shall be deemed guilty of a misdemeanor and punished in accordance with section 1-10, and if violation continues, each day's violation shall constitute a separate offense. In addition to any penalties provided for [in] this section, this section is enforceable by injunction.

(Ord. No. 422, § 1, 5-8-95; Ord. No. 645, § 1, 11-12-13)

Secs. 6-35—6-40. Reserved.

ARTICLE III. ENFORCEMENT OF THE CODE

Sec. 11-3-1. Duty to Enforce.

It shall be the duty of the designated Zoning Administrator or his/her designee, to enforce this Code.

Sec. 11-3-2. Building Permits and Plans.

No building or structure shall be erected, constructed, reconstructed, structurally altered, substantially repaired, or converted in use until a building permit has been issued, and approval of all substantially repaired, or converted in use until a building permit has been issued, and approval of all plans has been granted by the Building Inspector. All structures must conform to the New Mexico Building Code, latest edition, on file in the Office of the Building Inspector. The Building Inspector may require soils and/or concrete tests to assure compliance with the New Mexico Building Code.

- A. A permit issued in conflict with this Code is void.
- B. The Building Inspector and the designated Zoning Administrator or their designated representatives may inspect all buildings and premises in observance of this Code.
- C. In case of building construction of any manner, or a building or land use in violation of the Code, the designated Zoning Administrator shall:
 - 1. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
 - 2. Restrain, correct or abate the violation;
 - 3. Prevent the occupancy of such building, structure or land;
 - 4. Prevent any illegal act, conduct, business or use in or about such premises;
 - 5. Notify the Planning and Zoning Commission and other applicable agencies of such violation.

Sec. 11-3-3. Certificate of Occupancy.

A certificate of occupancy approving a structure or use of land shall be required from the designated Zoning Administrator for any of the following prior to occupancy:

- A. Occupancy and use of a building hereafter erected or structurally altered;
- B. Change in use of an existing building to a use of a different classification;
- C. Occupancy and use of vacant land;
- D. Change in the use of land to a use of a different District classification;
- E. Change in the use of a non-conforming use.

Sec. 11-3-4. Legal Documents to Insure Compliance.

The designated Zoning Administrator may require affidavits, disclosure statements, deed restrictions, easements or other legal documents to assure compliance with the provisions of this Code. Such documents may be approved for use in specific cases by the City Attorney.

(Ord. No. 574, 8-28-07)

Sec. 11-3-5. Violations of this Code.

It shall be a violation of this Code for any person, firm, or other corporation to neglect, refuse to comply with, or resist the enforcement of any provision of this Code or any requirement pursuant thereto, or in any way use, change or construct a building or structure in non-conformance with this Code. Any person or persons found guilty of violating any provision of this Code shall be punished by a fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00) or by imprisonment in jail for a period not to exceed thirty (30) days, or by both fine and imprisonment. Each day that such violation exists shall constitute a separate offense.

Violations of this Code shall be brought into compliance, abated, removed or taken to municipal court for judgment. In all cases that the court rules to allow a structure to remain in non-conformance with this Code, there shall be a pro forma action by the City Commission permitting such use. Such action shall be consistent with the court's ruling, and thereafter said use shall be considered as a legal non-conforming use and be subject to the provisions thereof.

ARTICLE IV. INDUSTRIAL WASTES¹

Sec. 14-111. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C, expressed in terms of weight and concentration (milligrams per liter).

Commercial wastewater means the liquid wastes resulting from the processes employed in industrial commercial trade or business establishments, as distinct from domestic wastes.

Compatible pollutant means BOD, suspended solids, pH and fecal coliform bacteria, and such additional pollutants as are now or may be in the future specified and controlled in this City's NPDES permit for its wastewater treatment works where such works have been designated and used to reduce and remove such pollutants.

Domestic wastes means liquid wastes from the noncommercial preparation, cooking, and handling of food or containing human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities, and institutions.

Garbage means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food.

National Pollutant Discharge Elimination System (NPDES) means the program for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into the navigable waters, the contiguous zone, and the oceans pursuant to section 402 of the Act.

Person means any individual, firm, company, partnership, corporation, association, group, or society, and includes the State of New Mexico, and agencies, districts, commissions, and political subdivisions created by or pursuant to state law.

pH means the logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering.

User means any person who discharges, causes, or permits the discharge of wastewater into the City's wastewater treatment system.

Wastewater treatment system means any devices, facilities, structures, equipment, or works owned or used by the City for the purpose of the transmission, storage, treatment, recycling, and reclamation of industrial and domestic wastes, necessary to recycle or reuse water at the most economical cost over the estimated life of the system, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, their appurtenances, extensions, improvements, remodeling, additions, and alterations thereof;

¹Cross reference(s)—Health and sanitation, ch. 6.

State law reference(s)—Municipal authority to regulate and prohibit industrial nuisances, NMSA 1978, § 3-18-13.

elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

(Ord. No. 369, § 1, 1-22-90)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 14-112. Wastewater discharges.

- (a) *Prohibitions.* No person shall discharge or deposit or cause or allow to be discharged or deposited into the wastewater treatment system any wastewater which contains the following:
- (1) *Oil, sands, and grease.*
 - a. Oil, sand, and/or grease concentrations or amounts from commercial facilities violating federal NPDES standards;
 - b. Wastewater from commercial facilities containing floatable fats, wax, grease, or oils;
 - c. Wax, grease, or oil concentrations of mineral origin of more than ten mg/l, whether emulsified or not, or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius) at the point of discharge into the system;
 - d. Total fat, wax, grease, or oil concentrations of more than ten mg/l, whether emulsified or not, or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius) at the point of discharge into the system.
 - (2) *Explosive mixtures.* Liquids, solids, or gases which, by reason of their nature or quantity, are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the sewerage facilities or to the operation of the system. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, zylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.
 - (3) *Noxious material.* Noxious or malodorous solids, liquids, or gases, which, either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life, or are or may be sufficient to prevent entry into a sewer for its maintenance and repair.
 - (4) *Improperly shredded garbage.* Garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in the public sewers, with no particle greater than one-half inch in any dimension.
 - (5) *Solid or viscous wastes.* Solid or viscous wastes which will or may cause obstruction to the flow in a sewer, or otherwise interfere with the proper operation of the wastewater treatment system. Prohibited materials include but are not limited to grease, uncomminuted garbage, animal guts or tissues, paunch manure, bones, hair, hides, or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, clay, spent lime, stone, or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, and similar substances.
 - (6) *Unpolluted waters.* Any unpolluted water including but not limited to water from cooling systems or of stormwater origin, which will increase the hydraulic load on the treatment system.
 - (7) *Discolored material.* Wastes with objectionable color not removable by treatment process.
 - (8) *Corrosive wastes.* Any waste which will cause corrosion or deterioration of the treatment system. All wastes discharged to the public sewer system must have a pH value in the range of six to nine standard

unit. Prohibited materials include but are not limited to acids, sulfides, concentrated chloride and fluoride compounds, and substances which will react with water to form acidic products.

- (b) *Limitations.* No person shall discharge or convey, or permit or allow to be discharged or conveyed, to a public sewer any wastewater containing pollutants of such character or quantity that will:
- (1) Not be susceptible to treatment or interfere with the process or efficiency of the treatment system;
 - (2) Constitute a hazard to human or animal life, or to the stream or watercourse receiving the treatment plant effluent;
 - (3) Violate treatment standards;
 - (4) Cause the treatment plant to violate its NPDES permit or applicable receiving water standards.

(Ord. No. 369, § 2, 1-22-90)

Sec. 14-113. Control of prohibited wastes.

- (a) *Regulatory actions.* If wastewaters containing any substance described in section 14-112 are discharged or proposed to be discharged into the sewer system of the City or to any sewer system tributary thereto, the City Manager may take any action necessary to:
- (1) Prohibit the discharge of such wastewater;
 - (2) Require the person making, causing, or allowing the discharge to pay any additional cost or expense incurred by the City for handling and treating excess loads imposed on the treatment system;
 - (3) Take such other remedial action as may be deemed to be desirable or necessary to achieve the purpose of this article.
- (b) *Admission to property.* Whenever it shall be necessary for the purposes of these rules and regulations, the Wastewater Superintendent or designated assistant, upon the presentation of credentials, may enter upon any property or premises at reasonable times for the purpose of:
- (1) Copying any records required to be kept under the provisions of this article;
 - (2) Inspecting any monitoring equipment or method; and
 - (3) Sampling any discharge of wastewater to the treatment works.

The Wastewater Superintendent or designated assistant may enter upon the property at any hour under emergency circumstances.

(Ord. No. 369, § 3, 1-22-90)

Sec. 14-114. Commercial wastewater monitoring and reporting.

- (a) *Records and monitoring.*
- (1) All commercial users who discharge or propose to discharge wastewaters to the wastewater treatment system shall maintain such records of production and related factors, effluent flows, and pollutant amounts or concentrations as are necessary to demonstrate compliance with the requirements of this article and any applicable state or federal pretreatment standards or requirements.
 - (2) The owner or operator of any premises or facility discharging commercial wastes into the system shall install at his own cost and expense a suitable monitoring vessel to facilitate the accurate observation,

sampling, and measurement of wastes. Such equipment shall be maintained in proper working order and kept safe and accessible at all times.

- (3) The monitoring vessel shall be located and maintained on the commercial user's premises outside the building. When such a location would be impractical or cause undue hardship on the user, the City Manager may allow such facility to be constructed in the public street or sidewalk area, with the approval of the public agency having jurisdiction over such street or sidewalk, and located so that it will not be obstructed by public utilities, landscaping, or parked vehicles.
- (b) *Inspection, sampling, and analysis.* Compliance determinations with respect to section 14-112 prohibitions and limitations may be made on the basis of either instantaneous grab samples or composite samples of wastewater. Composite samples may be taken over a 24-hour period, or over a longer or shorter time span, as determined necessary by the Wastewater Superintendent or designated assistant to meet the needs of specific circumstances.

(Ord. No. 369, § 4, 1-22-90)

Sec. 14-115. Enforcement procedures.

- (a) *Notification of violation.* Whenever the Wastewater Superintendent or designated agent finds that any person has violated or is violating this article, or any prohibition, limitation, or requirement contained in this article, the City Manager may serve upon such person a written notice stating the nature of the violation and providing a reasonable time, not to exceed ten days, for the satisfactory correction.
- (b) *Legal action.* Any discharge in violation of the substantive provisions of this article or an order of the hearing authority shall be considered a public nuisance. If any person discharges sewage, commercial wastes, or other wastes into the City treatment system contrary to the substantive provisions of this article, the City Attorney or City Manager may commence an action for appropriate legal and/or equitable relief in the Municipal Court.
- (c) *Penalty for violation of article.* Any person or entity convicted of a violation of this article shall be fined in a sum not to exceed \$300.00 for any one offense, and such person may be confined in the City or County Jail for a period of not more than 90 days.

(Ord. No. 369, § 5, 1-22-90)

Sec. 14-116. Permit required for the drilling of new domestic water wells.

- (a) *Authority and purpose.* This section is enacted pursuant to the authority of NMSA 1978, Sections 3-53-1.1 (2001), 3-53-2 (1965) and 3-53-2.1 (2007). The purpose of this section is to preserve and protect the City's water resources and to provide for the health, safety and general welfare of City residents and visitors.
- (b) *Permit required for new domestic water wells.* No new domestic water well shall be drilled or dug within the municipal boundaries of the City except pursuant to a domestic water well permit issued by the City's Water/Wastewater Utility Director.
- (c) *State Engineer approval.* Application for a new domestic water well permit from the City shall only be submitted after approval of a domestic water well permit issued by the New Mexico State Engineer, a copy of which shall be provided to the City with the application for a city domestic water well permit. The application to the City for a new domestic water well permit shall be accompanied by an application fee in the amount of \$100.00.
- (d) *Plans and specifications.* The application for a new domestic water well permit from the City shall be accompanied by plans and specifications for the proposed new domestic water well and associated plumbing

and other equipment, prepared by an engineer, geologist, hydrogeologist, or New Mexico licensed well driller, with sufficient detail for review by the City. The City's Water/Wastewater Utility Director may deny an application not supported by adequate plans and specifications, or in his or her discretion may permit resubmittal of the application with revised plans and specifications, without requiring payment of a new application fee.

- (e) *No cross-connections with City water utility.* Cross-connections that could permit mingling of water from domestic water wells with water from the City water utility are prohibited.
- (f) *City action.* The City's Water/Wastewater Utility Director shall act on each domestic water well permit application and provide notice of the action to the applicant within 30 days after submittal of the application. If the Water/Wastewater Utility Director fails to act within 30 days after submittal of the application, the application shall be deemed to be approved and the applicant may proceed with the proposed installation. If the application is denied, the Water/Wastewater Utility Director shall state, in writing, the reasons for denial and shall also promptly notify the Las Cruces office of the New Mexico State Engineer that the application was denied and the reasons for denial. An applicant whose application is denied for any reason, or who is otherwise aggrieved by the decision of the Water/Wastewater Utility Director, may appeal the Water/Wastewater Utility Director's decision to the City Commission by filing a notice of appeal with the Municipal Clerk within 30 days from the date of the Water/Wastewater Utility Director's decision.
- (g) *Geothermal waters.* For purposes of this section, "geothermal waters" shall mean waters which in their natural state have both a temperature greater than 90 degrees Fahrenheit and a concentration of total dissolved solids (TDS) greater than 1,200 parts per million. The following conditions and limitations shall apply to new domestic water wells that are intended or reasonably expected to divert geothermal waters, or that upon completion are found actually to produce geothermal waters.
 - (1) There shall be no more than one domestic water well producing geothermal waters on any lot or parcel of land one acre in area or smaller. For purposes of this section 14-116, two or more adjacent lots or parcels of land in common ownership shall be considered a single lot or parcel. If an applicant seeks to drill or dig a new domestic water well to produce geothermal waters on a lot or parcel of land one acre in area or smaller where there is a pre-existing well producing geothermal waters, the City will require as a condition of approval that the pre-existing well shall be properly plugged and abandoned by a well driller licensed by the State of New Mexico within 60 days after the new well is completed. The City may, in its discretion, permit more than one domestic water well producing geothermal waters on a lot or parcel of land larger than one acre in area, provided that all wells on the property have been permitted by the New Mexico State Engineer.
 - (2) No new domestic water well producing geothermal waters shall be approved unless adequate provision has been made for the discharge of the geothermal waters after use.
 - (3) There shall be no cross-connection that could permit mingling of geothermal waters with any supply of drinking water, whether or not such drinking water supply is derived from the City water utility.
 - (4) A new domestic well producing geothermal waters shall be equipped with a totalizing meter of a design satisfactory to the City. The totalizing meter shall be properly calibrated and shall be capable of continuous, reliable operation in measuring the flow of warm waters with a high total dissolved solids content. The well owner shall record meter readings at least monthly, and shall annually report all meter readings made during each calendar year to the City, no later than February 1 of the subsequent year. The well owner shall also furnish the City copies of any meter readings or other reports required by the New Mexico State Engineer.
- (h) *Other waters.* The following conditions shall apply to new domestic water wells that are intended or reasonably expected to produce waters that are not geothermal waters.

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- (1) An application for a new domestic water well to produce waters other than geothermal waters may be denied if the applicant's property is within the municipal boundaries, the nearest property boundary is within 300 feet of a municipal water utility distribution line, and the City can provide water utility service to the applicant's property within 90 days from the date of the application, unless the applicant's property is zoned and used primarily for agricultural purposes. If the application is denied, the City shall provide water utility service to the applicant's property within 90 days from the date of denial, subject to the City's standard charges and rate schedules.
 - (2) Notwithstanding the foregoing subsection 14-116(h)(1), an application for a new domestic water well to produce waters other than geothermal waters shall be approved if the applicant's total cost of connection to the municipal water utility system, including costs incurred by extending the service line, purchasing a meter (not to include utility expansion charges or similar charges) and physically connecting to a residence is greater than the cost of drilling a new domestic water well, regardless of the property's distance from the municipal water utility distribution line. The applicant is responsible for demonstrating the cost of drilling a domestic water well on the property and shall present to the City a written quote by a well driller licensed by the State of New Mexico. The City shall determine whether the written quote is reasonable. Upon completion of any well drilled under this exemption, the applicant shall not use any water from the well before a sworn affidavit by the well driller showing the actual cost of drilling the well is submitted to, and accepted by, the City. If the actual cost of drilling the well exceeds the total cost of connection to the City water system, the well shall be plugged and abandoned and the City shall provide water service to the property. All applicable fees and costs of connection shall be paid by the applicant.
 - (3) The owner of a municipally permitted well producing non-geothermal waters shall furnish the City copies of any meter readings or other reports required for that well by the New Mexico State Engineer.
- (i) *Filing of well record.* Upon completion of any domestic well approved by the City, the applicant or well driller shall file with the City's water/wastewater utility director a copy of the well record that is required to be filed with the Office of the State Engineer. It is the responsibility of the applicant to ensure that the well record is properly filed. If the well record has not been filed within one year after City approval for a domestic well, such approval shall be considered void unless the applicant provides evidence satisfactory to the City that an extension of time has been granted for completion of the domestic well by the Office of the State Engineer, in which case the City will grant an extension of time commensurate with that granted by the Office of the State Engineer.
 - (j) *Protection from organic chemical contamination.* Notwithstanding any other provision of this section, the City may deny an application for a domestic water well under either of the following conditions:
 - (1) An application may be denied if it is determined by the City that the proposed well will be located within an area of existing ground water contamination, or in such close proximity to an area of existing ground water contamination, that it is reasonably expected to produce water containing any organic chemical contaminant in a concentration greater than the maximum contaminant level for that contaminant permitted under the Safe Drinking Water Act of 1974, as amended, and regulations promulgated thereunder, or greater than the allowable concentration for any organic chemical contaminant listed in Subpart A of Section 20.6.2.3103 of the New Mexico Administrative Code. This subsection shall not be deemed to prohibit or limit the production and use of water containing inorganic chemical constituents in excess of drinking water standards, whether Federal or State, provided that such water is not contaminated by the presence of organic chemical constituents in excess of the concentrations stated in this subsection.
 - (2) An application may be denied if it appears, based on information available to the City, that production of water from the well is likely to cause the migration or spread of contaminated water from an area of existing ground water contamination, even if the water actually produced by the proposed well does not exceed the organic contaminant levels described in the preceding subsection. Where the possibility

of such migration or spread of contaminated water appears to exist, the City as a condition of permit approval may require that the applicant provide ground water flow modeling or other evidence and documentation by a qualified engineer or hydrogeologist, satisfactory to the City, demonstrating that the production of water from the proposed well will not cause the migration or spread of contaminated water to the detriment of other well users and property owners. The City may limit production of water from a well to an amount less than that approved by the New Mexico State Engineer, if it appears that such limitation is necessary to protect ground water quality.

(Ord. No. 651, §§ 1, 2, 2-11-14)

Editor's note(s)—Ord. No. 651, §§ 1, 2, adopted Feb. 11, 2014, repealed the former § 14-116, and enacted a new § 14-116 as set out herein. The former § 14-116 pertained to moratorium for the drilling of new domestic wells, and derived from Ord. No. 628, § 1, adopted Aug. 14, 2012; Ord. No. 638, § 1, adopted Aug. 13, 2013; and Ord. No. 650, § 1, adopted Nov. 21, 2013.

Sec. 14-117. Management of geothermal waters after use.

- (a) *Authority and purpose.* This section is enacted pursuant to the authority of NMSA 1978, § 3-23-1 (1965 and as subsequently amended) and NMSA 1978, §§ 3-26-1 through 3-26-3 (1965 and as subsequently amended), the Federal Clean Water Act, and the New Mexico Water Quality Act (NMSA 1978, §§ 74-6-1 through 74-6-17 (1967, and as subsequently amended)). The purpose of this section is to provide for the safe and appropriate disposal of geothermal waters produced from wells permitted by the Office of the State Engineer under NMSA 1978, § 72-12-1 ("domestic water wells") to ensure protection of the resource, to ensure compliance with environmental regulations, and to provide for the health, safety and general welfare of City residents and visitors.
- (b) *Geothermal waters; definition and scope.* This section applies to the discharge or disposal of geothermal waters produced from domestic water wells within the City after the application of the waters to beneficial use. For purposes of this section, "geothermal waters" shall mean waters which in their natural state have both a temperature greater than 90 degrees Fahrenheit and a concentration of total dissolved solids (TDS) greater than 1,200 parts per million (ppm). Due to possible residual heat and to the elevated concentration of TDS, geothermal waters require appropriate disposal and may require additional treatment before disposal in order to ensure that there is no degradation of quality in the watercourse or subsurface reservoir to which the geothermal waters are disposed.
- (c) *Discharge or disposal of geothermal waters.* Each applicant seeking a City permit for a domestic water well that is expected or intended to produce geothermal waters shall describe the proposed method for discharge or disposal of such waters following their use. Discharge or disposal by the method proposed and approved shall be a condition of the permit, and any person seeking to alter the actual method of discharge or disposal shall apply to the City for approval of the altered method for discharge or disposal of the geothermal waters before making the change. Subject to the regulations and limitations of this section, a user of geothermal waters from domestic water wells within the City may discharge or dispose of such waters by one of three methods: (i) disposal to a French drain or land surface application if permitted by the New Mexico Environment Department (NMED) under applicable regulations; (ii) disposal to the City's hot water drain (the "hot ditch"); or (iii) disposal to the municipal wastewater utility system. An applicant may propose an alternative method of discharge or disposal which the City may approve if the applicant demonstrates to the City's satisfaction that the alternative method is at least as protective of water quality and the health, safety and general welfare as the specific methods enumerated in this subsection and is not contrary to any applicable regulation of the United States or the state of New Mexico.
- (d) *Discharge or disposal by infiltration.* An applicant seeking to discharge or dispose of geothermal waters produced from a domestic water well into the subsurface shall provide documentation showing that the discharge or proposed discharge has been permitted by NMED in accordance with Section 20.6.2.3104 of the New Mexico Administrative Code (NMAC) or other applicable regulation, or else that no NMED permit is

required because the discharge or proposed discharge is exempted from the permit requirement pursuant to Section 20.6.2.3105 NMAC or other applicable regulation. If the applicant is required to provide reports or other documentation to NMED, then copies of such reports or other documentation shall be supplied to the City at the same time they are submitted to NMED. Notwithstanding any other provision of this section, the City may deny an application for a domestic water well permit seeking to discharge or dispose of geothermal waters into the subsurface if the disposal location is within 1,000 feet laterally of a municipal water supply well or other well that is a source of public drinking water supply.

- (e) *Discharge to the hot ditch.* Discharge of geothermal waters from a domestic water well to the hot ditch shall require a permit from the City. An application for permit to discharge to the hot ditch shall describe the location of the discharge, the volume of water to be discharged on a monthly or annual basis, the anticipated temperature and TDS concentration of the discharge, and any other pertinent information requested by the City. The application shall be accompanied by an application fee of \$100.00.
- (1) A permit to discharge to the hot ditch will be valid for a period of five years and will be renewable upon application to the City within three months prior to the expiration date. Persons discharging geothermal waters from a domestic water well to the hot ditch and intending to continue such discharge shall apply for a permit within one year after enactment of this section. Application for a permit to allow a new discharge to the hot ditch may be made at any time.
 - (2) To defray City costs for maintenance and operation of the hot ditch, there shall be a monthly fee imposed for each point of discharge to the hot ditch from a domestic water well. The fee shall be in the same amount as the fee for discharge of geothermal waters to the wastewater utility system as provided in section 14-79, service charges.
 - (3) The volume of geothermal waters produced from a domestic water well and discharged to the hot ditch by each permittee shall be determined by either (i) accurate, continuous measurement of the discharge by a method satisfactory to the City, or (ii) measurement of the volume of geothermal waters produced by the well or wells serving the premises, which volume shall be deemed to be the volume of the discharge from the premises except for any adjustments that may be mutually agreed between the City and the permittee, for good cause shown. Water diversion (meter) reports required by and provided to the office of the New Mexico State Engineer shall constitute compliance with the requirement for measurement of the volume of geothermal waters produced.
 - (4) Permits for discharge of waters produced from domestic water wells to the hot ditch shall run with the well or wells producing the geothermal water to be discharged. If any domestic water well is sold or otherwise transferred to a different owner or owners, any permit issued to the former owners shall remain in good standing so long as the new owners file with the City a notice of change of ownership, along with a filing fee of \$25.00, within a reasonable time following the change of ownership. If the new owners fail to file a notice of change of ownership, after notification by the City that the notice is required, the City may require that the discharge of waters to the hot ditch be discontinued.
 - (5) Duly authorized officers, employees or agents of the City shall have the right to enter upon any premises at reasonable times to inspect, sample, and determine the flow rate of each discharge into the hot ditch, and to ensure the adequate maintenance and proper operation of the discharge facility.
- (f) *Discharge to the municipal wastewater utility system.* Discharge of geothermal waters from a domestic water well to the municipal wastewater (sewer) system for treatment and disposal shall be only in accordance with applicable sections of the Municipal Code, including but not necessarily limited to sections 14-66 through 14-115 and this section 14-117.
- (1) The monthly fee for discharge of geothermal waters to the wastewater utility system shall be as provided in section 14-79, service charges.

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- (2) The volume of geothermal waters from domestic water wells discharged to the wastewater utility system from each connection shall be determined by either (i) accurate, continuous measurement of the discharge by a method satisfactory to the City, or (ii) measurement of the volume of geothermal waters produced by the well or wells serving the premises, which volume shall be deemed to be the volume of the discharge from the premises except for any adjustments that may be mutually agreed between the City and the permittee, for good cause shown. Water diversion (meter) reports required by and provided to the office of the New Mexico State Engineer shall constitute compliance with the requirement for measurement of the volume of geothermal waters produced.
 - (3) Duly authorized officers, employees or agents of the City shall have the right to enter upon any premises at reasonable times to inspect, sample, and determine the flow rate of geothermal water discharges to the wastewater utility system, and to ensure the adequate maintenance and proper operation of the facilities and equipment required for such discharge.

(Ord. No. 654, § 1, 5-13-14)

Sec. 5-73. Appointment of Deputy Inspectors; report to Chief.

The Chief of the Fire Department is empowered and authorized to appoint as many deputies to be employees of the Fire Department as required to make the inspections provided for in this article and who shall report in writing the results of their inspections to the Chief of the Fire Department.

(Code 1962, § 3-2-3)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.2

SUBJECT: Discussion/Update – Animal Shelter Expansion

DEPARTMENT: Community Development

DATE SUBMITTED: January 19, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Tara Manning – Animal Shelter Manager

Summary/Background:

Update the Commission on the progress of design of Animal Shelter Expansion

Recommendation:

None – Update only

Attachments:

- Draft Conceptual Plan
-

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

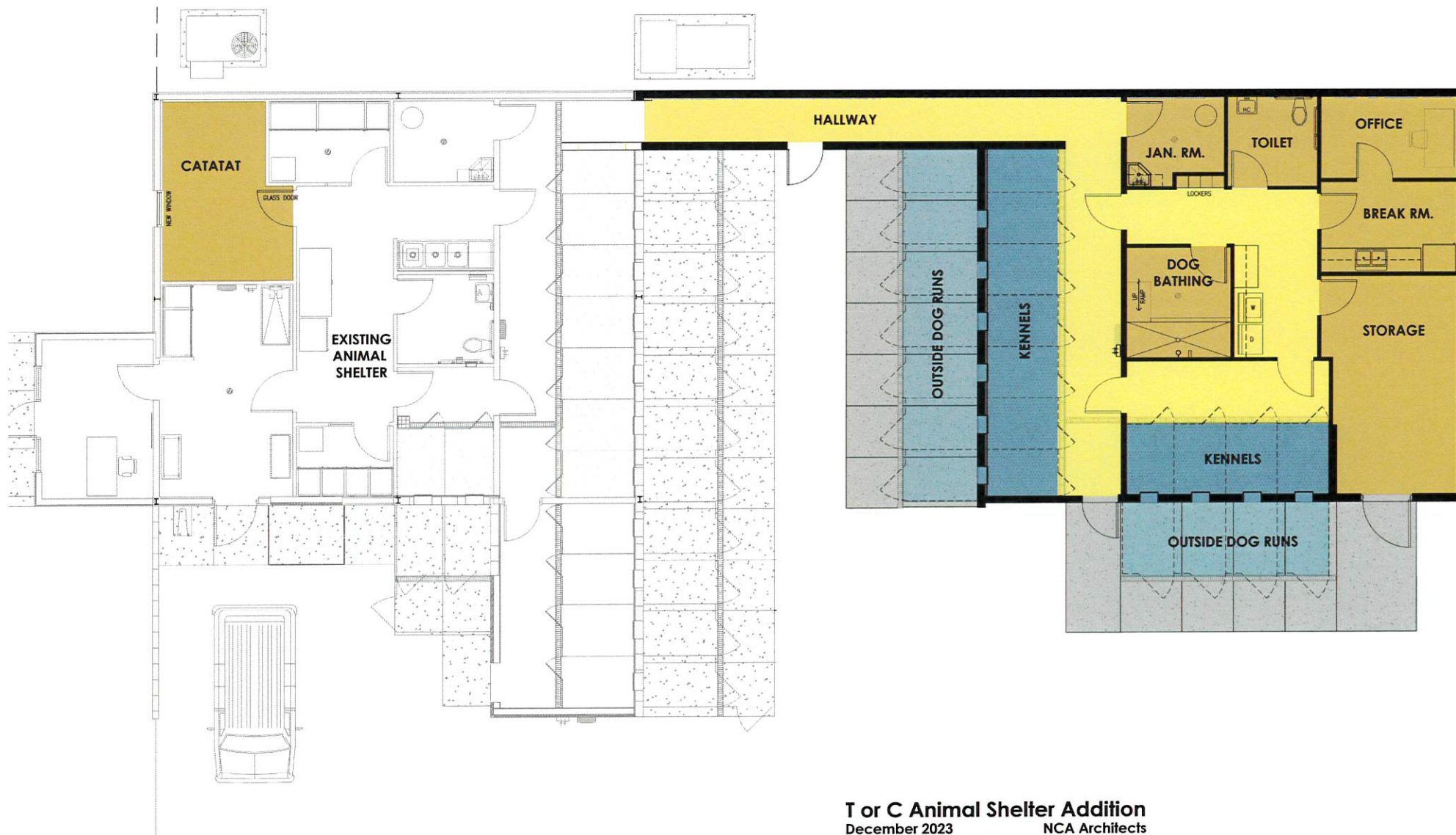
CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 1-24-24



T or C Animal Shelter Addition
 December 2023 NCA Architects



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.3

SUBJECT: Discussion/Action – Board of Veterinary Medicine Animal Care and Facility Fund Grant Recipient Agreement

DEPARTMENT: Community Development

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Tara Manning – Animal Shelter Manager

Summary/Background:

Animal Shelter was awarded \$36,375.00 for Spay and Neuter Services.

Recommendation:

Accept Award

Attachments:

- Award Letter
- Recipient Agreement

Fiscal Impact (Finance): Yes

\$36,375.00 Revenue – Funds to be expended within 12 Months of issued check date.

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. -

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File Name: CC agendas 1-24-24

State of New Mexico Vice-
Board of Veterinary Medicine

MICHELLE LUJÁN GRISHAM
Governor



Lawrence Young, DVM
Vice-Chair

William J. Duran, MPA
Executive Director and CFO

January 5, 2024

Tara Manning
Truth or Consequences Animal Shelter
505 Sims St.
Truth or Consequences, NM 87901

Dear Tara,

By formal motion at a meeting of the Board held on November 8, 2023, the Board of Veterinary Medicine has selected your organization for funding from the Animal Care and Facility Fund in the amount of \$36,375.00. Please note that Bordetella vaccines are not covered by these funds. I have attached the Spay and Neuter Services Agreement for your review and signature.

To accept the funds, you must be a State of New Mexico recognized vendor; therefore, I am attaching the W-9 form and instruction sheet for your use. Complete the form according to the instructions and return via email to deborah.schenk@bvm.nm.gov and william.duran@bvm.nm.gov. Please include a voided check for ACH or direct deposit of the funds.

Please give me a call at the number listed below should you have questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Will J. Duran".

William J. Duran, MPA
Executive Director and CFO

7301 Jefferson Street, N.E., Suite H
Albuquerque, NM 87109-4363

Telephone 505.553.7021
Facsimile 505.553.7024



State of New Mexico
Board of Veterinary Medicine

MICHELLE LUJÁN GRISHAM
Governor



Lawrence Young, DVM
Vice-Chair

William J. Duran, MPA
Executive Director and CFO

SPAY/NEUTER SERVICES AGREEMENT

Conditions to be met in acceptance of funds are as follows:

1. Funds are to be expended within 12 months of the date of the check.
2. Funds must be spent in accordance with the conditions listed on the award letter accompanying this agreement.
3. Funds not expended must be returned to the NM Board of Veterinary Medicine (NMBVM) in the form of a check within 30 days after the 12-month period has expired.
4. Reports are vital to the success of the program. Two reports are to be submitted to the NMBVM, one at 6 months post award and a final report due at the end of the 12-month period. Reports are to include project progress, number of procedures done for both dogs and cats, funds spent, and funds remaining.
5. The final report will be submitted to the NMBVM no later than 30 days after the 12-month period, setting out a detailed accounting of expenditures associated with spay/neuter programs provided using Animal Care and Facility Fund funding. The final number of procedures completed will also be included in the final report.
6. Receipts and invoices must be submitted as supporting documents for the report.
7. Recipients must comply with a state audit of funds should one occur.

Failure to comply with these terms may jeopardize future funding consideration.

The Agreement must be returned bearing the original signature below to the address below. a copy is unacceptable. Please make a copy of the signed agreement for your records.

Congratulations! Your hard work in providing services to homeless, unwanted, and lost domestic animals is appreciated by the Board and the citizens of New Mexico.

By accepting the funds, recipients agree to the stipulations as set forth above and in the award letter accompanying this agreement.

By: _____
Printed name, title, and name of organization.

Signature: _____ Date: _____

7301 Jefferson Street, N.E., Suite H
Albuquerque, NM 87109-4363

Telephone 505.553.7021
Facsimile 505.553.7024





CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.4

SUBJECT: Discussion/Action – Submission of a Concept Proposal and Grant Application to USDA RISE Grant by Sierra County Business Center Training Division in partnership with the City of Truth or Consequences

DEPARTMENT: Community Development

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager/Melanie Feldkamp

Summary/Background:

Sierra County Business Center Training Division would like to enter into a partnership with the City of Truth or Consequences and submit a concept proposal and grant application to USDA RD for the Rural Innovation Stronger Economy (RISE) program. Purpose of the program is to create high wage jobs and new businesses in underserved rural communities. Concept proposals are due February 1st 2024 and applications are due April 1st 2024. Match requirement of 20% will be covered by Sierra County Business Center. Formal partnership agreement will be drafted for Commission review/approval.

Recommendation:

Approve submission of Concept Proposal and if eligible proceed with drafting partnership agreement and application for review/approval by Commission prior to submission.

Attachments:

- RISE Grant information PDF
- Grant Application
- Concept Proposal submitted by Sierra County Business Center Training Division

Fiscal Impact (Finance): Yes

Reimbursement Grant

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: -

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File Name: CC agendas 1-24-24

STAKEHOLDER ANNOUNCEMENT

USDA Offers Grants for Programs to Create High-Wage Jobs and New Businesses in Underserved Rural Communities

WASHINGTON, Jan. 2, 2024 – The U.S. Department of Agriculture (USDA) today announced that USDA is accepting grant applications for community-driven programs that will help create high-wage jobs and new businesses in underserved rural communities.

The [Rural Innovation Stronger Economy \(RISE\)](#) program encourages regional, innovation-driven approaches to economic development by funding job accelerator partnerships in low-income and underserved rural communities.

For fiscal year 2024, the program is making approximately \$2 million available to partnerships of local governments, investors, industry, institutions of higher education, and other public and private entities in rural areas. The funding may be used to support innovation centers and job accelerator programs that improve the ability of distressed rural communities to create high-wage jobs, form new businesses, and identify and maximize local assets.

USDA encourages applications that serve the smallest communities with the lowest incomes. USDA is particularly interested in applications that will advance Biden-Harris Administration priorities to:

- Reduce climate pollution and increase resilience to the impacts of climate change through economic support to rural communities.
- Ensure all rural residents have equitable access to Rural Development (RD) programs and benefits from RD-funded projects; and
- Help rural communities recover economically through more and better market opportunities and through improved infrastructure.

The deadline to submit applications is 11:59 p.m. Eastern Time, April 1, 2024. Applications must be submitted through [Grants.gov](#). Potential applicants may submit a concept proposal for review by the agency to Grants.gov no later than 4:30 p.m. local time Feb. 1, 2024.

The minimum award amount per grant is \$500,000. The maximum award amount per grant is \$2 million.

For additional information, see page 43 of the Jan. 2, 2024, [Federal Register](#).

Applicants are encouraged to contact their nearest USDA [Rural Development State Office](#) ahead of the application deadline for more information about the program or the application process.

USDA Rural Development provides loans and grants to help expand economic opportunities and create jobs in rural areas. This assistance supports infrastructure improvements; business development; housing; community facilities such as schools, public safety and health care; and high-speed internet access in rural areas. For more information, visit www.rd.usda.gov.

If you'd like to subscribe to USDA Rural Development updates, visit our [GovDelivery subscriber page](#).

Prior to filing a Rural Innovation Stronger Economy (RISE) grant application, please consider the following critical points:

1. **APPLICANT** - Ensure that you are an eligible partnership applying for RISE funds. Individuals, small businesses, single entities, and those that are not one of the entities referenced in RISE regulation § 4284.1112 are **NOT** eligible for RISE. You must be a partnership consisting of a lead applicant and partner applicants per RISE requirements. Applicants structured differently than those found in RISE regulation will be determined ineligible for funds.
2. **REGION** - Ensure that the region proposed is eligible for RISE. This means that the targeted region has a population of less than 50,000 residents (based on targeted communities/towns/cities), and a majority of communities within the region are considered low-income communities. Low income is defined in RISE regulation and refers to 45D(e) of the Internal Revenue Code of 1986, which in summary means that the Median Household Income for your community or region must be 80% or less of the State's Median Household Income OR the poverty rate is 20% or higher. If a targeted City/Town has a population greater than 50,000 then this would not be an eligible location for a RISE region. Please state the specific towns/communities targeted and their population to ensure compliance with RISE regional requirements. Additional information may be found as defined in § 4284.1103 and discussed at § 4284.1112(d) of RISE regulation. USDA, Rural Development Business Programs mapping information may be found at:

<https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=RBSmenu>

Please be as specific as possible on the towns/cities served and provide their Census information regarding Median Household Income and population on each town/city served in the region so that compliance with the rural and low-income requirements of the program are easily identified in the application and met. At least one of the partners must be physically located in the targeted region. Ensure this is listed in the application.

3. **INDUSTRY CLUSTER** – You must have a specific industry cluster(s) that is the focus of your RISE project. Information regarding the region's businesses within that industry cluster and their involvement in the RISE project activities will be helpful in the application evaluation. General workforce training or general training is not eligible under RISE. Additionally, programs which provide an extension of University courses are ineligible. The training/programs must benefit residents of the targeted region and result in high-wage jobs within a particular industry cluster or clusters.
4. **MATCHING FUNDS AND GRANT CALCULATION** – You must demonstrate that each activity requesting RISE grant dollars is matched with a minimum 20% match of Non-Federal funds. This is not just a 20% total of eligible project costs, but also a demonstration of 20% of matching

funds per each eligible RISE activity. Please be aware, the 20% match is not calculated on the grant request amount, but 20% of the RISE activity costs. Additionally, the project budget must not show more than 10% of the grant amount being used for administrative purposes.

5. **PARTNERSHIP AGREEMENT** – The partnership agreement must be a single collective document signed on by all participants in the partnership. Partners can have a history of working together prior to December 20, 2018, however, for purposes of RISE the partnership agreement must be established on or after December 20, 2018. This agreement identifies the lead partner and all participating partners. It is a formal agreement that indicates responsibilities of all parties and agreement for implementation of the RISE project. Letters of support and letters of recommendation are **NOT** a partnership agreement and do not provide sufficient documentation for eligibility.
6. **ELIGIBLE COSTS** – Please be aware that RISE funds can only be used for eligible costs tied to Innovation Center construction or implementation, equipment supporting the innovation center programs, programming for the innovation center, or directed training for high-wage jobs that will provide direct benefit to a particular industry cluster(s). Any other costs may be deemed ineligible.
7. **INELIGIBLE COSTS** – RISE is not able to provide a source of funding for scholarships, stipends, research and development or pass-through payments to a partner in the partnership. Lease payments to a partner in the partnership proposed with RISE funds are ineligible and may result in an ineligible project. Please note, while business incubators can be a part of the Innovation Center, it cannot be the sole purpose of the RISE project, but a service provided by the Innovation Center and the Innovation Center programming targeting a particular industry cluster(s) as proposed in the application scope. Again, all programming, services and business incubator services must be directed at a particular industry cluster(s). All other ineligible costs may be found in the RISE regulation § 4284.1114 (d).

RISE eligibility isn't limited to the points above, but these are common issues resulting in ineligibility determinations based on historical experience. It is recommended that any potential applicant refer to RD Instruction 4284 Subpart L for the RISE regulation and all requirements. Please follow the application template closely to ensure that all eligibility and application criteria are met.

If you find your proposed project does not meet the requirements of RISE, we encourage you to review other Business Programs on our website or with your local Rural Development State Office at <https://www.rd.usda.gov/about-rd/state-offices>

RISE regulation source: <https://www.federalregister.gov/documents/2021/06/15/2021-12334/rural-innovation-stronger-economy-rise-grant-program>

Agency:	Office of the Assistant Secretary for Research and Technology (OST-R) U.S. Department of Agriculture	Funding Opportunity Number:
NOFO	Rural Innovation Stronger Economy (RISE)	RBS-23-BUSINESS-0024

OVERVIEW		
Due Time / Date:	April 1, 2024 11:59 p.m. Eastern Time	Summary / Award
Delivery	GRANTS.GOV – must have SAMS number (Electronic submittal) 1. Obtain a Unique Entity Identifier (UEI) number. 2. Register with the System for Award Management (SAM) at www.SAM.gov. 3. Create a Grants.gov username and password.	
Contact for Questions	Rural Development State Office or U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or Fax: (833) 256–1665 or (202) 690– 7442; or program.intake@usda.gov Rachel Reister, Program Management Division, RBCS, USDA, 1400 Independence Avenue SW, Mail Stop3226, Washington, DC 20250–3226, (202) 720–1400 or email: rachel.reister@usda.gov	

Funding Cycle	FY 2024	
Total Program Funding	\$2,000,000	
Award Allocation	\$500,000 and the maximum award amount per grant is \$2,000,000	
Period of Performance	September 15, 2024 through December 31, 2028.	
Cost Share	The matching funds requirement is 20 percent of the eligible project costs	

ELIGIBILITY	
Applicant	• An eligible applicant must be a rural jobs accelerator partnership formed after December 20, 2018 • 7 CFR 4284.1112 Rural jobs accelerator partnership eligibility. A rural jobs accelerator partnership (Partnership) organizes key community and regional stakeholders into a working group that focuses on the shared goals and needs of the targeted industry cluster (s). • The rural jobs accelerator partnership must have a lead applicant who is responsible for the administration of the grant proceeds and activities. A lead applicant will be the named applicant on Agency documents and must be one of the following entities listed in 7 CFR 4284.1112(b), which is as follows: (1) A district organization; (2) An Indian Tribe or a political subdivision of a Tribe, including a special purpose unit of a tribal government engaged in economic development activities, or a consortium of Indian Tribes; (3) A State or a political subdivision of a State, including a special purpose unit of a State or local government engaged in economic development activities, or a consortium of political subdivisions; (4) An institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a consortium of institutions of higher education; or (5) A public or private nonprofit organization. (ii) The Lead Applicant must be registered in the System for Award Management (SAM) prior to submitting an application. The Lead Applicant must also maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. All other restrictions in this Notice will apply. (iii) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6 of this Notice. Inclusion of funding restrictions outlined in Section D.6 of this Notice precludes the Agency from making a federal award. (d) Completeness. An application will not be considered for funding if it fails to meet an eligibility criterion by the time of application deadline or does not provide sufficient information to determine eligibility and scoring.

	Applicants must include all the forms and proposal elements as discussed in the regulation and as clarified further in this Notice in one package. Incomplete applications will not be reviewed by the Agency.
Projects	All project activities must be for the benefit of communities, industries and residents located in a rural area, as defined. The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility. Projects involving the construction of an innovation center as an eligible purpose are subject to the environmental requirements of 7 CFR part 1970, as well as the applicable design and construction requirements of RD and the adopted codes of the jurisdiction

Application Submission			
Application	Notes/Requirements for Each Section:	NOFO Page	Due Date
1. Title Page	1. Title of Project: Submitted by Applicant Name: Address: City: County: State: Zip code: Phone #: E-mail: Fax: Applicants may only submit one RISE application per Fiscal Year (FY). The maximum aggregate amount awarded to an applicant cannot exceed \$2,000,000 in a Fiscal Year \$ _____ Grant Request Grant Writer Name Phone # E-mail Date Submitted to Grants.gov	Application Template located at: Rural Innovation Stronger Economy (RISE) Grants Rural Development (usda.gov)	April 1, 2024
2. Table of Contents			
3. Survey on Ensuring Equal Opportunity for Applicants	(Nonprofits only) (Optional)		
4. Clarifications on Proposal Elements –	This section is limited to 10 pages in length using a minimum 11-point font and must		

Concept Paper	include the information in Items I. through IV. as described in the Tab A Divider Page below. A Concept Paper may be submitted up to 60 days prior to the application deadline published in the Federal Register and should also be submitted through grants.gov. A Concept Paper is not required and is not an application for funding, though all elements of the Concept Paper are to be included in a complete application.		
5. Project specific forms	A. SF 424 – Application – the Federal Catalog number is 10.868 – requires a DUNS number B. SF 424 A – Budget C. SF 424 B – Assurances D. SF 424 C – Construction (if applicable) E. Identify the ethnicity, race, and gender of lead applicant. (Optional) F. Certification that lead applicant is a legal entity in good standing G. Statement of any known relationships between lead applicant and Agency employees PLEASE NOTE, THE PROJECT BUDGET MUST SHOW A MINIMUM OF 20% IN MATCHING FUNDS FOR EACH RISE ACTIVITY AND MAY NOT INCLUDE ADMINISTRATIVE COSTS IN EXCESS OF 10 PERCENT OF THE GRANT AMOUNT. THE PROJECT BUDGET MUST NOT INCLUDE RISE GRANT FUNDS UTILIZED AS A PASS THROUGH TO A MEMBER OF THE PARTNERSHIP IN THE FORM OF LEASE PAYMENTS OR OTHER ACTIVITIES WITH A CONFLICT OF INTEREST OR APPEARANCE THEREOF.		
6. Readiness Demonstration	Description of readiness of all partners of the rural jobs accelerator partnership to contribute to the project including their ability to coordinate activities, finances, and outcomes of the project.		
	Evidence of a formal agreement among partners of the rural jobs accelerator partnership for delivery of the RISE program. PLEASE NOTE, LETTERS OF RECOMMENDATION OR SUPPORT ARE NOT A FORMAL AGREEMENT. THE DOCUMENT SHOULD BRING ALL PARTNERS TOGETHER AND INDICATE RESPONSIBILITIES AND AGREEMENTS FOR IMPLEMENTATION OF THE RISE PROJECT.		
	Evidence of demonstrated readiness in administering the RISE grant, if awarded, including demonstration of potential success in establishment of a jobs accelerator project which targets an industry cluster and projects that meet the initiatives of the RISE grant program. The application should indicate when activities related to the expected outcomes will commence.		
	Description of how the project will be marketed in the region and how the rural jobs accelerator partnership will capture any program impacts and success stories.		
	Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task.		
7. Targeted Initiatives	(Provide documentation on how the RISE project will impact the initiatives below, as applicable. Please provide a brief description on how and when the initiative will be delivered.)		
	Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high wage job creation, new business formation,		

	business expansion, and economic growth		
	Integrating small businesses into a supply chain		
	Creating or expanding commercialization activities for new business formation		
	Identifying and building assets in rural communities that are crucial to supporting regional economies		
	Facilitating the repatriation of high wage jobs to the United States		
	Supporting the deployment of innovative processes, technologies, and products		
	Enhancing the capacity of small businesses in regional industry clusters, including disadvantaged and very small businesses		
	Increasing United States exports and business interaction with international buyers and suppliers		
	Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners to meet the needs of employers and prepare workers for high wage jobs in the identified industry clusters, including the upskilling of incumbent workers		
	Ensuring rural communities, independent of RISE program funds, have the capacity and ability to carry out projects related to housing, community facilities, infrastructure, or community and economic development to support the anticipated regional industry cluster growth		
8. Potential to produce high wage jobs and benefit rural small and disadvantaged businesses.	(Provide documentation on how the RISE project will impact the goals below)		
	Describe how the project will develop the skills and expertise of the local workforce, entrepreneurs and institutional partners to meet the needs of employers and provide high wage jobs in the targeted industry cluster(s), which may also include the upskilling of incumbent workers.		
	Demonstrate how the project will benefit the skills and expertise of small and disadvantaged businesses, as applicable.		
	Demonstrate any participation of higher education, applied research institutions, workforce development entities and community-based organizations that are willing to partner with the project to provide workers with skills relevant to the industry cluster needs of the region. Document the type of processes being used, with an emphasis on the use of on-the-job training, classroom occupational training or incumbent worker training, as applicable.		
	Demonstrate any participation of investment organizations, venture development organizations, venture capital firms, revolving loan funders, angel investment groups, community lenders, community development financial institutions, rural business investment companies, small business companies (as defined in Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662)), philanthropic organizations, and other		

	institutions focused on expanding access to capital, that are committed to the success of the job accelerator partnership and willing to potentially invest in projects emerging from the jobs accelerator and business incubator.		
9. Region (PLEASE INDICATE WHICH PARTNERS ARE/WILL BE LOCATED IN THE TARGETED REGION) PLEASE USE THE 2010 CENSUS FOR ALL CENSUS BUREAU INFORMATION BELOW.	Provide the Census Bureau information on the targeted region's median household income. If the targeted region contains multiple communities or counties, information on each must be provided.		
	Provide the Census Bureau information on the targeted region's educational attainment, specifically the percentage of the population who hold a bachelor's degree.		
	Discuss how any direct career training will be provided to existing residents of the region. Existing residents being those that live in the region at the time of application.		
	Discuss any local support for the RISE project.		
	Discuss the entrepreneurial commitment to the RISE project.		
	Discuss any innovative processes and technologies to be utilized in the targeted industry cluster(s) of the RISE project.		
	Discuss the initial and continuing capital investment in the RISE project.		
	Discuss any demand for regional and global markets of the product and/or service provided by the targeted industry cluster. Describe if the industry is emerging, existing or declining, and the projected impacts of the RISE project to the industry.		
	Discuss if the region consists of any Opportunity Zone(s)		
	Elaborate on the current broadband service within the region and any plans to leverage the current broadband service or enhance broadband service in the region through the RISE project.		
10. Financial Information	Identification of matching funds and other sources of funds for the project. Provide written commitments for matching funds and other sources of funds at the time the application is submitted. PLEASE NOTE, YOU MUST DEMONSTRATE THAT EACH ACTIVITY REQUESTING RISE GRANT DOLLARS IS MATCHED WITH A 20% MATCH OF NON-FEDERAL FUNDS. THIS IS NOT JUST 20% OF TOTAL ELIGIBLE PROJECT COSTS, BUT DEMONSTRATED PER LINE ITEM OF EACH RISE ACTIVITY. ADDITIONALLY, PLEASE NOTE THAT THE MATCHING FUNDS REQUIREMENT OF 20% IS NOT FACTORED ON THE GRANT AMOUNT, BUT ON THE TOTAL PROJECT COSTS. PLEASE NOTE THAT THE PROJECT BUDGET MUST NOT INCLUDE ADMINISTRATIVE COSTS IN EXCESS OF 10 PERCENT OF THE GRANT AMOUNT OR THE APPLICATION WILL BE DEEMED INELIGIBLE. THE PROJECT BUDGET ALSO MUST NOT INCLUDE RISE GRANT FUNDS UTILIZED AS A PASS THROUGH TO A MEMBER OF THE PARTNERSHIP IN THE FORM OF LEASE PAYMENTS OR OTHER ACTIVITIES WITH A CONFLICT OF INTEREST OR APPEARANCE THEREOF. Current financial statements and a narrative description demonstrating financial		

	feasibility and sustainability of the project, all of which demonstrate sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.		
Civil Rights Information	3. Survey on Ensuring Equal Opportunity for Applicants		
	<i>The purpose of these questions is to gather race, ethnicity, and gender information about persons who apply and participate in this USDA program. The information provided will not be used when reviewing the application or when determining eligibility to participate in this program. The answers provided are voluntary and are not required to be considered a complete application. The information provided will be used to improve the operation of this program, to help USDA design additional opportunities for program participation, and to monitor enforcement of laws that require equal access to this program for eligible persons. For entities, check all that apply. The information will be kept private to the extent permitted by law.</i>		
	What is the lead applicant's race? Identify the race of the lead applicant's leadership (check all that apply):	American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other	

		Pacific Islander ☐ White ☐	
	What is the lead applicant leadership's gender characteristics? :	Male ☐ Female ☐	
	What is the lead applicant leadership's ethnicity? :	Hispanic or Latino ☐ Not Hispanic or Latino ☐	

TAB A

4. Clarification on Proposal Elements (This section is titled "Concept Paper", see the Federal Register Notice and 7 CFR 4284.1115(a) for further guidance.) This section in Tab A is limited to 10 pages in length using a minimum 11-point font and must include the information in Items I. through IV. below. All elements of the Concept Paper are to be included in a complete application.

I. Rural jobs accelerator partnership information including the members and structure of the partnership, the date formalized, and the governance or leadership board. The information will identify the lead applicant and each partner's ties to the region, their roles in the delivery of the RISE program and any history of previous collaboration between partners. The amount and source of anticipated matching funds will also be provided.

II. Describe the geographic region to be served including the total population and economic characteristics of the region such as unemployment rates and median household income levels. Industry sectors, their status, size and economic contribution to the region and all communities, including metropolitan statistical areas and nonmetro low-income communities within the region, should be identified. The availability and planned enhancements of broadband service and other assets of the region should also be identified. If the region to be served has a population of more than 50,000 inhabitants, the applicant must document why they believe the area is "rural in character" including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base.

III. Identify the industry cluster(s) that will be prioritized by the rural jobs accelerator partnership with information on the firms and support industries in those clusters. Describe the status of the industry (as emerging, existing, or declining), any existing interconnection and networks within the industry cluster and describe participation and scale of small and disadvantaged businesses within the industry cluster. Describe the opportunities or potential of industry growth in the region and competitive advantages of the region and industry cluster which should be highlighted along with opportunities within the industry for the creation of or upgrading to high wage jobs. PLEASE NOTE THAT AN INDUSTRY CLUSTER(S) MUST BE IDENTIFIED AND MUST BE THE FOCUS OF THE APPLICATION. GENERAL WORKFORCE TRAINING OR OTHER GENERAL TRAINING NOT FOCUSED ON AN INDUSTRY CLUSTER(S) IS NOT ELIGIBLE.

IV. An executive summary, project plan and scope of work must be provided with the Applicant's strategy, activities, budget, goals and objectives for the use of RISE funds. The applicant should also provide information on the sustainability of the partnership and jobs accelerator at the conclusion of the RISE grant period.

TAB B

5. Project Specific Information and Forms

Federal Tax ID

DUNS

To get a DUNS number, call 1-866-705-5711 or go to

<http://fedgov.dnb.com/webform>

Also Insert DUNS number on the SF424 Form

System for Award Management (SAM) (CAGE code)

All applicants must register their DUNS # in the System for Award Management and obtain a CAGE code prior to submitting an application. Registration in SAM must remain active during all times when a Federal award application is under consideration and when a Federal award is active.

For information on what is required to register with SAM, go to:

https://www.sam.gov/sam/transcript/Quick_Guide_for_Grants_Registrations.pdf

To begin the SAM registration process, go to: <http://www.sam.gov/portal/public/SAM/>

CAGE Code

Expiration Date

Project Specific Forms

Forms can be found by typing in the form name (i.e. SF 424) in the "Form Number" column via this website:

<https://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home>

Insert the executed forms immediately after this divider page.

SF 424 – Application for Federal Assistance

SF 424A – Budget Information PLEASE NOTE, YOU MUST DEMONSTRATE THAT EACH ACTIVITY REQUESTING RISE GRANT DOLLARS IS MATCHED WITH A MINIMUM 20% MATCH OF NON-FEDERAL FUNDS. THIS IS NOT 20% OF TOTAL ELIGIBLE PROJECT COSTS, BUT MATCHING FUNDS FOR EACH LINE ITEM OF ACTIVITY. ADDITIONALLY, PLEASE NOTE THAT THE 20% REQUIREMENT OF TOTAL MATCHING FUNDS IS NOT FACTORED ON THE GRANT AMOUNT, BUT ON TOTAL PROJECT COSTS. THE PROJECT BUDGET MUST NOT INCLUDE

ADMINISTRATIVE COSTS IN EXCESS OF 10 PERCENT OF THE GRANT AMOUNT OR THE APPLICATION WILL BE DEEMED INELIGIBLE. THE PROJECT BUDGET ALSO MUST NOT INCLUDE RISE GRANT FUNDS UTILIZED AS A PASS THROUGH TO A MEMBER OF THE PARTNERSHIP IN THE FORM OF LEASE PAYMENTS OR OTHER ACTIVITIES WITH A CONFLICT OF INTEREST OR APPEARANCE THEREOF.

SF 424B – Assurances

SF 424C – Construction (if applicable)

Applicant eligibility and project eligibility certification/determination
(Certifications on following pages)

Rural Innovation Stronger Economy Grant Program

Applicant Eligibility and Project Eligibility Certification/Determination Form

Per 4284.1112 - Applicant Eligibility

(A) Type of applicant. PLEASE NOTE THAT INDIVIDUALS OR INDIVIDUAL ENTITIES ALONE ARE NOT A PARTNERSHIP. A rural jobs accelerator partnership must include one or more representatives of the following: Applicant Certification:

(Please Check as applicable)

(i) a State, Tribal, or local government

(ii) a State, Tribal, or local government entity

iii) a land-grant college or university or other institution of higher education, as defined in the Higher Education Act of 1965 (20 U.S.C. 1001)

(iv) a rural non-profit cooperative

(v) a private entity, which may include a business in an industry cluster, economic development or community development organization, financial institution including a community development financial institution, philanthropic organization or labor organization

AND a lead applicant from the following:

(i) district organization

(ii) Indian Tribe, or a political subdivision of a Tribe, including a special purpose unit of a tribal government engaged in economic development activities, or a consortium of Indian Tribes

(iii) State or political subdivision of a State, including a special purpose unit of a State or local government engaged in economic development activities, or a consortium of political subdivisions

(iv) institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001) or a consortium of institutions of higher education)

(v) public or private nonprofit organization

(B) Legal entity in good standing. The Lead applicant must certify that it is a legal entity in good standing (as applicable), and operating in accordance with the laws of the State(s) or Tribe where the Applicant has a place of business.

Are you (the lead applicant) a legal entity in good standing in accordance with the laws of the State(s) or Tribe where you have a place of business?

List the State or Tribal land where you have a place of business:

Yes 0 No 0

(C) Known relationship with an Agency Employee. The Applicant must identify whether or not there is a known relationship or association with a Rural Development Employee. If there is a known relationship, identify each employee with whom you have a relationship.

Does the applicant have a known relationship with a Rural Development employee? Yes 0 No 0

If Yes, identify the name of each employee:

(D) Ineligible applicants. Consistent with Department regulations, an applicant is ineligible if it is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

Have you (the lead applicant) ever been debarred or determined ineligible for

participation in Federal assistance programs? Applicant certification:

Yes 0 No 0

Lead applicants will also be considered ineligible for a grant if they have an outstanding Federal judgment (other than one obtained in the U.S. Tax Court), are delinquent on the payment of Federal income taxes, or are delinquent on Federal debt.

Do you (the lead applicant) have any outstanding Federal judgment, or are you delinquent on Federal income tax or delinquent on any Federal debt? Lead applicant certification:

Yes 0 No 0

Per 4284.1110 (a) - The Agency will review prior RISE awards to the lead applicant to determine satisfactory progress. To be eligible for additional funding, lead applicants that have previous RISE grants must have expended 50 percent or more of previous RISE awards at the time the Agency makes its eligibility determination or the application will be deemed ineligible for that funding cycle.

Per 4284.1113 - Project eligibility.

To be eligible for a RISE grant, the grant funds for a project must be used by the grant recipient to meet the requirements specified below. Please mark "Yes" or "No" to the following uses for your project:

Project eligibility questions for the applicant Yes No

1. The construction or purchase of a building to serve as an innovation center located in a rural low-income community, which establishes and/or supports a jobs accelerator and any equipment needs of the innovation center to support the jobs accelerator.

2. The support of programs to be carried out at or in direct partnership with the jobs accelerator, or in support of jobs accelerator initiatives including one or more of the following:

Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high-wage job creation, new business formation, business expansion, and economic growth of rural communities.

Integrating rural small businesses into a supply chain.

Creating or expanding commercialization activities for new business formation in rural areas.

Identifying and building assets in rural communities that are crucial to supporting regional economies.

Facilitating the repatriations of high-wage jobs to the United States.

Supporting the deployment of innovative processes, technologies, and products.

Enhancing the capacity of rural small businesses in regional industry clusters, including small and disadvantaged businesses.

Increasing United States exports and business interaction with international buyers and suppliers.

Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners in the region to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers

Do the rural communities in the targeted region, independent of RISE funding, have the capacity and ability to carry out projects relating to housing, community facilities, infrastructure, or community and economic development to support the anticipated regional industry cluster growth

Any activities that the Agency may determine to be appropriate, as specified in a Federal Register notice (Please describe the activity)

3. Not more than 10 percent of the RISE grant award will be used for indirect or actual costs of the applicant associated with administering the RISE grant.

4. The innovation center currently is or will be physically located in a rural area as defined in § 4284.1103, or if located in a non-rural area, will use grant funds to provide assistance to residents located in a rural area. Additionally, the innovation center must be located in a low-income rural community if grant funds are used for the construction,

	renovation or purchase of an innovation center. 5. Applicant understands and is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility. Projects involving the construction of an innovation center as an eligible purpose are subject to the environmental requirements of 7 CFR 1970. Applicant and Project Eligibility answers provided by: Applicant Name : Authorized Representative Name: Authorized Representative Signature: Title: Date:		
TAB C	6. Readiness Demonstration Description of readiness of all partners of the rural jobs accelerator partnership to contribute to the project including their ability to coordinate activities, finances, and outcomes of the project. Evidence of a formal agreement among partners of the rural jobs accelerator partnership for delivery of the RISE program. PLEASE NOTE, LETTERS OF RECOMMENDATION OR SUPPORT ARE NOT A FORMAL AGREEMENT. THE DOCUMENT SHOULD BRING ALL PARTNERS TOGETHER AND INDICATE RESPONSIBILITIES AND AGREEMENTS FOR IMPLEMENTATION OF THE RISE PROJECT ACTIVITIES. Evidence of demonstrated readiness in administering the RISE grant, if awarded, including demonstration of potential success in establishment of a jobs accelerator project which targets an industry cluster and the initiatives of the RISE grant. The application should indicate when activities related to the expected outcomes will commence. Description of how the project will be marketed in the region and how the rural jobs accelerator partnership will capture any program impacts and success stories. Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task.		

TAB D	7. Targeted Initiatives (Provide documentation on how the RISE project will impact the initiatives below, as applicable. Please provide a brief narrative description on how and when the initiatives will be delivered.) Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high wage job creation, new business formation, business expansion, and economic growth Integrating small businesses into a supply chain Creating or expanding commercialization activities for new business formation Identifying and building assets in rural communities that are crucial to supporting regional economies Facilitating the repatriation of high wage jobs to the United States Supporting the deployment of innovative processes, technologies, and products Enhancing the capacity of small businesses in regional industry clusters, including small and disadvantaged businesses Increasing United States exports and business interaction with international buyers and suppliers Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners to meet the needs of employers and prepare workers for high wage jobs in the identified industry clusters, including the upskilling of incumbent workers Ensuring rural communities have the capacity and ability to carry out projects related to housing, community facilities, infrastructure, or community and economic development to support regional industry cluster growth	
TAB E	8. Potential to produce high wage jobs and benefit rural small and disadvantaged businesses. (Provide documentation on how the RISE project will impact the goals below) Describe how the project will develop the skills and expertise of the local workforce, entrepreneurs and institutional partners to meet the needs of employers and prepare high wage jobs in the targeted industry cluster(s), which may also include the upskilling of incumbent workers. Demonstrate how the project will benefit the skills and expertise of small and disadvantaged businesses, as applicable. Demonstrate any participation of higher education, applied research institutions, workforce development entities and community-based organizations, that are willing to	

	partner with the project to provide workers with skills relevant to the industry cluster needs of the region, with an emphasis on the use of on-the-job training, classroom occupational training or incumbent worker training, as applicable. Demonstrate any participation of investment organizations, venture development organizations, venture capital firms, revolving loan funders, angel investment groups, community lenders, community development financial institutions, rural business investment companies, small business companies (as defined in Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662)), philanthropic organizations, and other institutions focused on expanding access to capital that are committed to the success of the job accelerator partnership and willing to potentially invest in projects emerging from the jobs accelerator and business incubator.		
TAB F	9. Region Provide the 2010 Census Bureau information on the targeted region's median household income. If the targeted region contains multiple communities or counties, information on each must be provided. Provide the 2010 Census Bureau information on the targeted region's educational attainment, specifically the percentage of the population who hold a bachelor's degree. Discuss how any direct career training will be provided to existing residents of the region. Existing residents being those that live in the region at the time of application. Discuss any local support for the RISE project. (PLEASE INDICATE WHICH PARTNERS ARE/WILL BE LOCATED IN THE REGION) Discuss the entrepreneurial commitment to the RISE project. Discuss any innovative processes and technologies to be utilized in the targeted industry cluster(s) of the RISE project. Discuss the initial and continuing capital investment in the RISE project. Discuss any demand for regional and global markets of the product and/or service provided by the targeted industry cluster. Discuss if the region consists of any Opportunity Zone(s) Elaborate on the current broadband service within the region and any plans to leverage the current broadband service or enhance broadband service in the region through the RISE project.		
TAB G	Identification of matching funds and other sources of funds for the project. Provide written commitments for matching funds and other sources of funds at the time the application is submitted. PLEASE NOTE, YOU MUST DEMONSTRATE THAT EACH ACTIVITY REQUESTING RISE GRANT DOLLARS IS MATCHED WITH A 20% MATCH OF NON-FEDERAL FUNDS. THIS IS NOT JUST 20% OF TOTAL ELIGIBLE PROJECT COSTS, BUT DEMONSTRATED PER LINE ITEM OF EACH RISE ACTIVITY. ADDITIONALLY, PLEASE NOTE THAT THE		

	MATCHING FUNDS REQUIREMENT OF 20% IS NOT FACTORED ON THE GRANT AMOUNT, BUT ON THE TOTAL PROJECT COSTS. PLEASE NOTE THAT THE PROJECT BUDGET MUST NOT INCLUDE ADMINISTRATIVE COSTS IN EXCESS OF 10 PERCENT OF THE GRANT AMOUNT OR THE APPLICATION WILL BE DEEMED INELIGIBLE. THE PROJECT BUDGET ALSO MUST NOT INCLUDE RISE GRANT FUNDS UTILIZED AS A PASS THROUGH TO A MEMBER OF THE PARTNERSHIP IN THE FORM OF LEASE PAYMENTS OR OTHER ACTIVITIES WITH A CONFLICT OF INTEREST OR APPEARANCE THEREOF. Current financial statements and a narrative description demonstrating financial feasibility and sustainability of the project, all of which demonstrate sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.		
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Sierra County Business Center-Training Division

Concept Proposal

City of Truth or Consequences

Melanie Feldkamp
1-17-2024



Sierra County Business Center- Training Division
Concept Proposal

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Sierra County Business Center- Training Division Concept Proposal

Executive Summary

Sierra County Business Center-Training Division is a new vocational/training school based in Truth or Consequences. In addition to ourselves (the owners), we have one full-time employee, our partnerships include Hot Springs High School & New Mexico Workforce Connection, both are located in Truth or Consequences these partnerships help us identify qualified participants for our vocational/training school.

Our focus is on young adults ages 16-24, Young adults will learn valuable skills in order to improve their employability by offering vocational training, mentorship, and on-the-job training. Our training program consists of: Interviewing basics, ethics in the workplace, OSHA 10, Introduction to construction, carpentry levels 1,2,3,4.

Released September 2023 Quarterly Economic Summary provided by NM Economic Development Department (EDD)
Q4 FY23-largest industry as a percentage matched taxable gross receipt (MTGR) was construction by 40% of the total MTGR in Sierra County.

Our local business owners repeatedly report a lack of available workers in Sierra County. The shortage of labor has impacted our community negatively and businesses have closed because they can't staff their business, or they can't expand their business to offset the rising costs of doing business.

Our goal is to expand the number of available workers through certified training programs to meet the growing demand for employment opportunities and to provide quality training for young adults in Sierra County. We anticipate a workforce that will be well trained and have the opportunity to positively impact the economy in our communities.

Needs Statement

According to the US Census Bureau (2022), 22.4 % of Sierra County residents are living in poverty. Living in poverty is associated with lower life expectancy, high infant mortality, poor reproductive health, higher rates of infectious diseases (notably tuberculosis and HIV infection), higher rates of substance use (tobacco, alcohol, and illegal drugs), higher rates of non-communicable diseases, depression and suicide, and increased exposure to environmental risks. Poor children are more likely to die by the age of five years and to suffer from acute respiratory infections, diarrhea, congenital anomalies, and chronic diseases.



Sierra County Business Center- Training Division Concept Proposal

According to the US Department of Health and Human Services- Office of Assistant Secretary for Planning and Evaluation (ASPE) are the poverty guidelines for FY 2022 & FY 2023.

Person in family or household	Jan-22	23-Jan
1	\$ 13,590	\$ 14,580
2	\$ 18,310	\$ 19,720
3	\$ 23,030	\$ 24,860
4	\$ 27,750	\$ 30,000
5	\$ 32,470	\$ 35,140
6	\$ 37,190	\$ 40,280
7	\$ 41,910	\$ 45,420
8	\$ 46,630	\$ 50,560

Goals, Objectives & Activities

Certified training (Training 360, Savvas Learning Center & National Center for Construction Educational & Research (NCCER) are online training programs that will promote job readiness, our on-the job training with licensed contractors offers young adults the necessary experience in the construction trades.

Training 360 Coursework

Interviewing Basics offered by 360 Training

The basic interviewing guidelines and principles, including The Behavior Consistency Principle and Digging the Well, review the definition of competency and can apply your understanding of Individual Contributor Competencies on-the-job. (.17 hrs., Certificate of Completion)

Configurable Code of Conduct offered by 360 Training

To maintain a standard of work performance and how employees conduct themselves at work on a daily basis. This course covers the many aspects of ethical work behavior – from workplace harassment to how to deal with customers. (2hrs., Certificate of Completion)

Business Ethics-Advanced offered by 360 Training

Company Codes of Conduct should establish the key elements required by the company's founders or leaders and promote ethical behaviors throughout every level of the company. Guidelines should be established for making ethically sound decisions, and consequences must be established for those who do not comply with the Code of Conduct. (1hr., Certificate of Completion)

OSHA 10 Construction offered by 360 Training

Standards covered: OSHA 29 CFR 1926

Learn the best practices for safeguarding against the top causes of fatalities and accidents in construction. This online course covers how to prevent slipping, tripping, getting struck by an



Sierra County Business Center- Training Division
Concept Proposal

object, electrocution, and getting caught between objects or machinery. (10 hrs., CEU, Department of Labor card upon completion)

On the Job Training provided by licensed contractors to demonstrate the skills necessary for an entry level construction worker. Complete five projects (10x6 storage shed with electric & HVAC splinter unit) approximately (90 hrs.), upon successful completion a certificate of completion is awarded. Total cost of materials for five project \$10,000.00

SAVVAS Learning Center – Appropriate for Grades 9-12

Core: Introduction to basic construction skills (72.5 hours) by Pearson Education, Inc. covers (Building Your Future in Construction, Basic Safety, Introduction to Construction Math, Introduction to Hand Tools, Introduction to Power Tools, Introduction to Construction Drawing, Introduction to Basic Rigging, Basic Communication Skills, Basic Employability, Introduction to Material Handling, Appendix A Answers key, Appendix C Construction Math, Appendix D Construction Drawing, Glossary and References), Core meets the standard for Core: Introductory Craft Skills Certification from National Center for Construction Education & Research (NCCER). Student access to NCCERconnect (digital textbooks and printed materials). \$62.99 Hardcover & \$35.00 for Pearson E-text or bundled \$97.99 per student.

National Center for Construction Education and Research

Carpentry Level 1 (162.5 hours) by Pearson Education, Inc. covers modules:

1. Orientation to the Trade- Reviews the history of the trade, describes the apprentice program, identifies career opportunities for carpentry and construction workers, and lists the skills, responsibilities, and characteristics a worker should possess. Emphasizes the importance of safety in the construction industry, approximately 2.5 hours.
2. Building Materials, Fasteners, and Adhesives- Introduces the building materials used in construction work, including lumber, sheet materials, engineered wood products, structural concrete, and structural steel. Also describes the fasteners and adhesives used in construction work. Discusses the methods of squaring a building, approximately 20 hours.
3. Hand and Power Tools- Provides descriptions of hand tools and power tools used by carpenters. Emphasizes safe and proper operation, as well as care and maintenance, approximately 10 hours.
4. Introduction to Construction Drawing, Specifications, and Layout- covers the techniques for reading and using construction drawings and specifications with an emphasis on drawings and information relevant to the carpentry trade. Introduces quantity takeoffs, approximately 22.5 hours.
5. Floor Systems- Covers framing basics and the procedures for laying out and constructing a wood floor using common lumber, as well as engineered building materials, approximately 25 hours.
6. Walls Systems- Describes procedures for laying out and framing walls, including roughing-in door and window openings, constructing corners, partition Ts, and bracing walls. Includes the procedure to estimate the materials required to frame walls, approximately 10 hours.
7. Ceiling Joist and Roof Framing- Describes types of roofs and provides instructions for laying out rafters for gable roofs, hip roofs, and valley intersections. Covers stick-built



Sierra County Business Center- Training Division
Concept Proposal

and truss-built roofs. Includes the basics of roof sheathing installation, approximately 47.5 hours.

8. Basic Stair Layout- Introduces types of stairs and common building code requirements related to stairs. Focuses on techniques for measuring and calculating rise, run, and stairwell openings, laying out stringers, and fabricating basic stairways, approximately 12.5 hours.
9. Introduction to Building Envelope Systems- Introduces the concept of the building envelope and explains its components. Describes types of windows, skylights, and exterior doors, and provides instructions for installation, approximately 12.5 hours.

Trainee Guide Hardcover +Access Card Package: \$94.00 per student

Instructor's Resource Access Card-includes access code to download detailed lesson plans, module exams, PowerPoint slides, performance profile sheets and

TestGen software: \$67.00

Carpentry Framing & Finishing Level 2 (210 hours) by Pearson Education, Inc. covers modules:

1. Commercial Drawing- (elective for Residential Path) Describes how to read and interpret a set of commercial drawings and specifications, approximately 25 hours.
2. Roofing Applications- (elective for Commercial Path) Describes how to properly prepare the roof deck and install roofing for residential and commercial buildings, approximately 25 hours.
3. Thermal and Moisture Protection- Covers the selection and installation of various types of insulating materials in walls, floors, and attics. Also covers the uses and installation practices for vapor barriers and waterproofing materials, approximately 7.5 hours.
4. Exterior Finishing- (elective for Commercial Path) Covers the various types of exterior finish materials and their installation procedures, including wood, metal, vinyl, and fiber-cement siding, approximately 35 hours.
5. Cold-Formed Steel Framing- Describes the types and grades of steel framing materials and includes instructions for selecting and installing metal framing for interior and exterior walls, loadbearing and nonbearing walls, partitions, and other applications, approximately 15 hours.
6. Drywall Installation- Describes the various types of gypsum drywall, their uses, and the fastening devices and methods used to install them. Also contains detailed instructions for installing drywall on walls and ceilings using nails, drywall screws, and adhesives. A discussion of fire- and sound-rated walls is also presented, approximately 15 hours.
7. Drywall Finishing- Describes the materials, tools, and methods used to finish and patch gypsum drywall. A discussion of both automatic and manual taping and finishing tools is presented, approximately 17.5 hours.
8. Doors and Door Hardware- Describes the installation of metal doors and related hardware in steel-framed, wood-framed, and masonry walls, along with their related hardware, such as locksets and door closers. A discussion on the installation of wood doors, folding doors, and pocket doors is also presented, approximately 20 hours.
9. Suspended Ceiling- (elective for Residential Path) Describes the materials, layout, and installation procedures for many types of suspended ceilings used in commercial



Sierra County Business Center- Training Division
Concept Proposal

construction, as well as ceiling tiles, drywall suspension systems, and pan-type ceilings, approximately 15 hours.

10. Window, Door, Floor, and Ceiling Trim- Describes the different types of trim used in finish work and focuses on the proper methods for selecting, cutting, and fastening trim to provide a professional finished appearance, approximately 25 hours.
11. Cabinet Installation- Provides detailed instructions for the selection and installation of base and wall cabinets and countertops, approximately 10 hours.

Trainee Guide Hardcover +Access Card Package: \$121.00 per student

Instructor's Resource Access Card-includes access code to download detailed lesson plans, module exams, PowerPoint slides, performance profile sheets and TestGen software: \$94.00

Carpentry Forms Level 3 (160 hours) by Pearson Education, Inc. covers modules:

1. Properties of Concrete- Describes the properties, characteristics, and uses of cement, aggregates, and other materials used in different types of concrete. Covers procedures for estimating concrete volume and testing freshly mixed concrete, as well as methods and materials for curing concrete, approximately 10 hours.
2. Rigging Equipment- Module ID 38101-11; from Basic Rigging, approximately 10 hours.
3. Rigging Practices- Module ID 38102-11; from Basic Rigging, approximately 15 hours.
4. Trenching and Excavating- Provides an introduction to working in and around excavations, particularly in preparing building foundations. Describes types and bearing capacities of soils; procedures used in shoring, shielding, and sloping trenches and excavations; trenching safety requirements, including recognition of unsafe conditions; and mitigation of groundwater and rock when excavating foundations, approximately 15 hours.
5. Reinforcing Concrete- Explains the selection and uses of different types of reinforcing materials. Describes requirements for bending, cutting, splicing, and tying reinforcing steel and the placement of steel in footings and foundations, walls, columns, and beams and girders, approximately 15 hours.
6. Foundations and Slab-on-Grade- Covers basic site layout safety, tools, and methods; layout and construction of deep and shallow foundations; types of foundation forms; layout and formation of slabs-on-grade; and forms used for curbing and paving, approximately 20 hours.
7. Vertical Formwork- Covers the applications and construction methods for types of forming and form hardware systems for walls, columns, and stairs, as well as slip and climbing forms. Provides an overview of the assembly, erection, and stripping of gang forms, approximately 22.5 hours.
8. Horizontal Formwork- Describes elevated decks and formwork systems and methods used in their construction. Covers joist, pan, beam and slab, flat slab, composite slab, and specialty form systems and provides instructions for the use of flying decks, as well as shoring and reshoring systems, approximately 15 hours.
9. Handling and Placing Concrete- Covers tools, equipment, and procedures for safely handling, placing, and finishing concrete. Describes joints made in concrete structures and the use of joint sealants, approximately 20 hours.



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Concept Proposal

10. Tilt-up Wall Panels- Describes how tilt-up concrete construction is used and how tilt-up panels are formed, erected, and braced. Covers the installation of rebar and types of embedments used to lift and brace the panels. Also covers methods used to create architectural and decorative treatments, approximately 17.5 hours.

Trainee Guide Paperback +Access Card Package: \$119.00 per student
Instructor's Resource Access Card-includes access code to download detailed lesson plans, module exams, PowerPoint slides, performance profile sheets and TestGen software: \$94.00

Carpentry Advanced Level 4 (161 required hours & 25 elective hours) by Pearson Education, Inc. covers modules:

1. Site Layout One- Distance Measurement and Leveling- Covers the principles, equipment, and methods used to perform differential leveling. Also covers the layout responsibilities of surveyors, field engineers, and carpenters; interpretation and use of site/plot plan drawings; the use of laser instruments; and methods used for on-site communication, approximately 22.5 hours.
2. Site Layout Two-Angular Measurement- Covers the principles, equipment, and methods used to perform site layout tasks that require angular and distance measurements. Tasks include laying out building lines and determining elevations by trigonometric leveling. The use of transits, theodolites, electronic distance measurement, and total stations are covered. Reviews trade mathematics needed to perform calculations related to angular measurements, approximately 30 hours.
3. Advanced Roof Systems- Covers commercial roofing materials and structures and describes the procedures for installing commercial roofing such as lap seams, standing seam, and built-up roofs, approximately 20 hours.
4. Advanced Wall Systems- Covers installation of a variety of finishing materials, including concrete masonry units and brick. Also covers installation of curtain walls and fire-rated commercial construction, approximately 25 hours.
5. Advanced Stair Systems- Provides extensive coverage of the materials and techniques used in finishing wooden staircases. Also covers a variety of stair systems used in commercial construction, approximately 25 hours.
6. Introduction to Light Equipment- Introduces light construction equipment, including the aerial lift, skid steer loader, electric power generator, compressor, compactor, and forklift. An overview of general safety, operation, and maintenance procedures is provided, approximately 10 hours.
7. Welding- Introduces the equipment, procedures, and safety practices used in cutting steel with oxyfuel equipment, as well shielded metal arc welding, gas-tungsten arc welding, and gas metal arc welding. Labs include practice in cutting and welding techniques, approximately 25 elective hours.
8. Commercial Finish Work- Introduces specialized finish materials used on interior and exterior walls, ceilings, and floors of commercial buildings, approximately 5 hours.
9. Site Preparation- Covers the planning process that precedes the start of work on a construction site, including environmental considerations, personnel issues, access



Sierra County Business Center- Training Division Concept Proposal

roads, traffic control, permits, site safety, utilities, and crane-related concerns, approximately 7.5 hours.

10. Fundamentals of Crew Leadership- Module 46101-11, approximately 20 hours.

Trainee Guide Paperback +Access Card Package: \$90.00 per student

Instructor's Resource Access Card-includes access code to download detailed lesson plans, module exams, PowerPoint slides, performance profile sheets and TestGen software: \$67.00

Partnerships

Sierra County Business Center-Training Division established a strategic alliance and are in collaboration with the Hot Springs High School, New Mexico Workforce Connections, and the Juvenile Probation System.

Sustainability

The Rural Innovation for Stronger Economy (RISE) Grant of \$500,000.00 - \$2,000,000.00 will provide stability for our vocational/training program.

Project Management

- a. Our staff includes two licensed contractors (owners), and an administrative person. We have volunteers that offer valuable insights, their time and promote Sierra County Business Center- Training Division in various non-fit organizations.
- b. Timeline:
 - FY1 successfully complete all of the coursework provided by Training 360, complete all coursework provided by SAVVAS Learning Center- Introduction to construction & begin coursework – carpentry level 1 provided by the National Center for Construction Education and Research, and (a grade of 70% or higher for NCCER to award a certificate of completion).
 - FY 2 &3 complete coursework- carpentry levels 1 & 2. (a grade of 70% or higher for NCCER to award a certificate of completion).
 - FY 4 complete coursework- carpentry levels 3 & 4(a grade of 70% or higher for NCCER to award a certificate of completion).

In Conclusion, the evidence supports the need for a local vocational/training program in Sierra County. Sierra County Business Center-Training Division is committed to serve the underserved youth in our communities thru certified training programs, mentorships and on the job training by licensed contractors to prepare young adults ages 16-24 for employment opportunities therefore reducing the poverty level in our county.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: December 13, 2023

Agenda Item #: H.5

SUBJECT: PD Update
DEPARTMENT: City Manager's Office
DATE SUBMITTED: January 19, 2024
SUBMITTED BY: City Clerk Torres
WHO WILL PRESENT THE ITEM: Chief of Police Tavizon

Summary/Background:

PD Update

Recommendation:

Presentation only

Attachments:

- N/A
- [Click here to enter text.](#)

Fiscal Impact (Finance): N/A

[Click here to enter text.](#)

Legal Review (City Attorney): N/A

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

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

File Name: CC agendas 1-24-24



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.6

SUBJECT: Presentation/Discussion/Action – Approval of the Grant Agreement between the New Mexico Department of Transportation and the City of Truth or Consequences Police Department.

DEPARTMENT: Police

DATE SUBMITTED: January 9, 2024

SUBMITTED BY: Chief Luis A. Tavizon

WHO WILL PRESENT THE ITEM: Chief Luis Tavizon

Summary/Background: The Truth or Consequences Police Department was awarded funding for the following projects:

- End Driving While Impaired (ENDWI) in the amount of \$3,569.00
- Buckle Up (BKLUP)/Click it or Ticket (CIOT) in the amount of \$1,075.00
- Selective Traffic Enforcement Program (STEP) in the amount of \$7,568.00

Payment. reimbursement for eligible expenses, the Grantee must submit timely and properly prepared reimbursement requests as provided in the Department's Electronic Grant Management System or the Traffic Safety Division Financial Management Manual 2019, as directed by the Department. The Grantee acknowledges that the Department will not pay for any expenses incurred before both parties sign the Agreement, after termination of the Agreement, or over the amount of the award noted in Section 1. The Grantee must submit its final reimbursement request no later than forty-five (45) calendar days after termination of this Agreement unless otherwise approved by the Department.

Recommendation: Approval of the Grant Agreement between the New Mexico Department of Transportation and the City of Truth or Consequences Police Department.

Attachments:

- NMDOT Memorandum
- Project Agreement

Fiscal Impact (Finance): Yes

\$12,212.00

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 1-24-24



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

MEMORANDUM

Date: November 21, 2023

To: Ricky Serna, Cabinet Secretary

Through: Jeff Barela, Director, Traffic Safety Division

From: Amber Montoya, Staff Manager

Subject: Letter of Justification for Grant Agreement between the New Mexico Department of Transportation Traffic Safety Division and City of Truth or Consequences.

DocuSigned by:

Jeff Barela

DocuSigned by:

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Amber Montoya

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**Michelle Lujan
Grisham**
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Gary Tonjes
Commissioner
District 2

Hilma E. Chynoweth
Commissioner
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

1. TSD Program Manager Nick Rivera, Phone # 505-470-8907, will oversee the project(s).
2. The Consolidated Agreement provides funding to Truth or Consequences Police Department to conduct the following project(s) and activities as shown below.
 - ENDWI – \$3,569.00 (Fed 164)
The ENDWI program funds overtime enforcement for DWI checkpoint and DWI directed patrol program. Funds are used to maintain the program, as funding allows, and to expand the program in areas of the State with high rates of DWI.
 - BKLUP - \$1,075.00 (State Road Fund)
The BKLUP program funds overtime for law enforcement agencies to conduct safety belt and child restraint/ booster seat use activities to increase in occupant protection use in New Mexico.
 - STEP – \$7,568.00 (State Road Fund)
Provides funding for sustained enforcement program to target specific traffic problems such as speed, DWI, road rage, distracted and reckless driving, fatigue/drowsy driving, occupant protection, and crashes involving pedestrians, primarily through the use of Safety Corridors. Participating agencies include local law enforcement.
3. The agreement will be effective from date of last signature to 9/30/2024.
4. Scopes of work, including deliverables, are provided in the applicable exhibits attached to the agreement below.
5. The agreement is Exempt from the procurement as it is with another government agency, (per NMSA 1978 Section 13-1-98, et seq.)



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

November 21, 2023

Chief Louis Tavizon
Truth or Consequences Police Department
507 McAdoo Street
T or C, NM 87901

RE: Project Agreement

Dear Coordinator:

Enclosed is the project agreement for the federal 2024 fiscal year. This letter contains information required to meet Federal Funding Accountability and Transparency Act (FFATA) and 2 CFR Part 200 requirements. Please provide a copy of this letter to the person responsible for meeting those requirements at your City, County, Town or Tribal agency. The following table contains the information necessary to meet these requirements.

Project Number	Funding Source	CFDA #	FAIN	Award Date	Amount
04-AL-64-104	BIL 164 Transfer Funds	20.608	69A37523300001640NMA	11/30/2022	\$3,569.00
04-OP-RF-104	State Road Fund				\$1,075.00
04-PT-RF-104	State Road Fund				\$7,568.00

2 CFR Subpart F 200.500-521

(a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

Michelle Lujan Grisham
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Gary Tonjes
Commissioner
District 2

Hilma E. Chynoweth
Commissioner
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6



(d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503.

Records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

If expenditures are less than \$750,000 during your agency's fiscal year 2024, please submit a statement to the Traffic Safety Division at the address listed on this letterhead. The Statement should read, "We did not meet the \$750,000 expenditure threshold and therefore we are not required to have a single audit performed for FY {24}."

Your agency must submit copies of audits and review reports associated with this grant agreement to the Department for informational purposes if requested regardless of whether the criteria for audit or review are met.

Operational Plan

Your agency is required to develop an operational plan to include a jurisdiction-specific performance goal, problem statement, problem identification, and basic crash data upon which the project is based. Performance goals should be specific, measurable, action-oriented, realistic, and time-bound.

Performance Indicators

The Department has implemented performance indicators on Department funded law enforcement projects. The performance indicators are as follows:

ENDWI Small Agency (Populations below 50,000) - 1 DWI in 36 hours

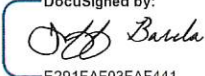
BKLUP 1 seat belt or child restraint citation for every 2 hours of enforcement worked.

STEP 2 citations or warnings for every hour of enforcement worked.

At no time does the New Mexico Department of Transportation require an individual officer to issue a specific number of citations during an enforcement period.

We look forward to working with you to prevent injuries and fatalities. Thank you for your cooperation.

Sincerely,

DocuSigned by:

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Jeff Barela, Director
Traffic Safety Division

Enclosure

CONTRACT NUMBER: _____
UNIQUE ENTITY IDENTIFIER: Q8N2MFFYFMC4
SUPPLIER: 0000054340

GRANT AGREEMENT

This Grant Agreement (**Agreement**) is between the New Mexico Department of Transportation (**Department**) and City of Truth or Consequences (**Grantee**), collectively referred to as the "parties." This Agreement is effective as of the date of the last party to sign it on the signature page below. The Department and the Grantee agree as follows:

1. **Award.** The Department hereby awards the Grantee funding for the following projects:
 - a. End Driving While Impaired (**ENDWI**), Project No. 04-AL-64-104, \$3,569.00;
 - b. Buckle Up (**BKLUP**)/Click It or Ticket (**CIOT**), Project No. 04-OP-RF-104, \$1,075.00;
 - c. Selective Traffic Enforcement Program (**STEP**), Project No. 04-PT-RF-104, \$7,568.00;
 - d. Total Funding awarded per this Agreement \$12,212.00.
2. **Scope of Work.** The Grantee shall perform the professional services stated in the following exhibit(s): **Exhibit A** - ENDWI; **Exhibit B** - BKLUP/CIOT; **Exhibit C** - STEP.
3. **Payment.** To be reimbursed for eligible expenses, the Grantee must submit timely and properly prepared reimbursement requests as provided in the Department's Electronic Grant Management System or the Traffic Safety Division Financial Management Manual 2019, as directed by the Department. The Grantee acknowledges that the Department will not pay for any expenses incurred prior to both parties signing the Agreement, after termination of the Agreement, or in excess of the amount of the award noted in Section 1. The Grantee must submit its final reimbursement request no later than forty-five (45) calendar days after termination of this Agreement, unless otherwise approved by the Department.
4. **Records and Audit.** The Grantee shall strictly account for all receipts and disbursements related to this Agreement. The Grantee shall record costs incurred, services rendered, and payment received. The Grantee shall maintain these financial records during the term of this Agreement and for three (3) years from the date of submission of the final reimbursement request. On request, the Grantee shall provide the financial records to the Department and the state auditor, and shall allow the Department and the state auditor to inspect or audit these financial records during business hours at the Grantee's principal office during the term of this Agreement and for three (3) years from the date of submission of the final reimbursement request. If the financial records provided by the Grantee are insufficient to support an audit by customary accounting practices, the Grantee shall reimburse the Department for any expense incurred related to the insufficient documentation within thirty (30) calendar days of written notice from the Department. If an audit or inspection reveals that funds were used for expenses not directly related to the project or were used inappropriately, or that payments were excessive or otherwise erroneous, the Grantee shall reimburse the Department for those funds or payments within thirty (30) calendar days of written notice.

5. **Officials Not to Benefit.** The parties intend that no member of the New Mexico legislature or the United States Congress, or any public official, public employee or tribal council member, in that person's individual capacity, will benefit from this Agreement.
6. **Termination.** The Department may terminate this Agreement for any reason, by giving the Grantee thirty (30) calendar days written notice. On receipt of a "Notice of Cancellation," the Grantee shall suspend work unless otherwise directed by the Department in writing. The Grantee may only terminate this Agreement based on the Department's uncured, material breach of the Agreement and by giving the Department thirty (30) calendar days' written notice. The parties acknowledge that termination will not nullify obligations incurred prior to termination and any obligations intended to survive termination of the Agreement, including but not limited to Section 4 and Section 11.
7. **Appropriations.** The Grantee acknowledges that:
 - a. this Agreement is contingent upon sufficient appropriations and authorizations being made by the Congress of the United States or the New Mexico state legislature;
 - b. if sufficient appropriations and authorizations are not made, this Agreement will terminate upon written notice by the Department to the Grantee; and
 - c. the Department will not expend any funds until approved for expenditure, and the Department's determination as to whether approval has been granted will be final.
8. **Compliance with Law.** The Grantee, its employees, agents and contractors, shall comply with the following:
 - a. Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the ADA Amendments Act of 2008, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, and 49 C.F.R. Section 21;
 - b. all applicable federal and state laws, rules, regulations, and executive orders pertaining to equal employment opportunity, including the Human Rights Act, NMSA 1978, Sections 28-1-1 through 28-1-15, and in accordance with such, the Grantee states that no person, on the grounds of race, religion, national origin, sex, sexual orientation, gender identity, spousal affiliation, serious medical condition, age, disability, or other protected class will be excluded from employment with or participation in, denied the benefits of, or otherwise subjected to, discrimination in any activity performed under this Agreement; if the Grantee is found to be in violation of any of these requirements, the Grantee shall take prompt and appropriate steps to correct such violation, subject to Section 6 above;
 - c. state laws applicable to workers compensation benefits for the Grantee's employees, including the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 through 52-1-70, and related rules;
 - d. 2 C.F.R. 200, Subpart F - Audit Requirements, Sections 200.500 - 200.521; and
 - e. those sections in Appendix A to Part 1300 labeled "applies to subrecipients as well as states."
9. **Notices.** For a notice under this Agreement to be valid, it must be in writing; be delivered by hand, registered or certified mail postage prepaid, fax or email; and be addressed as follows:

to the Department at:
New Mexico Dept. of Transportation
Attn: Traffic Safety Division
P.O. Box 1149
Santa Fe, NM 87504

to the Grantee at:
Truth or Consequences Police Department
Attn: Chief Louis Tavizon
507 McAdoo Street
T or C, NM 87901

10. **Severability.** The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statute, regulation, rule, or ordinance. The parties intend that if any provision of this Agreement is held to be unenforceable, the rest of the Agreement will remain in effect as written.
11. **Liability.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with the Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, as amended, and any other applicable law. This section is intended only to define the liabilities between the parties and it is not intended to modify in any way, the parties' liabilities as governed by law.
12. **Project Responsibility.** The Grantee acknowledges that it bears sole responsibility for performing the services referred to in Section 2.
13. **Term.** This Agreement takes effect as of the date the last party to sign it on the signature page below. The grantee may not start work until directed to by the Department. The Agreement terminates at 11:59 p.m. on September 30, 2024, unless earlier terminated as provided in Section 6 or Section 7.
14. **Applicable Law.** The laws of the state of New Mexico, without giving effect to its choice of law provisions, govern all adversarial proceedings arising out of this Agreement.
15. **Jurisdiction and Venue.** The Grantee acknowledges the jurisdiction of the courts of the state of New Mexico for any adversarial proceeding arising out of this Agreement, and that venue for any such proceeding will be in the First Judicial District Court for the county of Santa Fe, New Mexico.
16. **No Third-party Beneficiary.** This Agreement does not confer any rights or remedies on anyone other than the parties.
17. **Scope of Agreement and Merger.** This Agreement incorporates all the agreements, covenants, and understanding between the parties concerning the subject matter of this Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents will be valid unless included in this Agreement.
18. **Disadvantaged Business Enterprise.** The following provision applies to a USDOT-assisted federally funded agreement only. The recipient shall not discriminate on the basis of race, color, national origin, sex, or other protected class in the award and performance of any USDOT-assisted

contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

- 19. Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the parties.

The remainder of this page is intentionally left blank.

Each party is signing this Agreement on the date stated opposite that party's signature. This Agreement is effective as of the date of the last party to sign it on the signature page below.

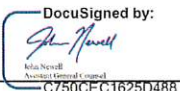
NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Cabinet Secretary or Designee

CITY OF TRUTH OR CONSEQUENCES

By: _____ Date: _____
Title: _____

Approved as to form and legal sufficiency.

By:  _____ Date: 12/1/2023
Assistant General Counsel
Department of Transportation

Approved as to form and legal sufficiency.

By: _____ Date: _____
Counsel for City of Truth Or Consequences

Exhibit A: Scope of Work, Training, Reimbursement and Reporting

END DRIVING WHILE IMPAIRED (ENDWI) Project Number: 04-AL-64-104

1. **Scope of Work.** The Grantee shall conduct sobriety checkpoints (SCs) and DWI directed enforcement patrols (DDEPs) in high crash locations, identified in data compiled by local, state, or federal government agencies, included in the Grantee's Operational Plan, and as negotiated between the Department and the Grantee. The Department encourages the Grantee to accompany SCs and DDEPs with public information, media, and educational activities. SCs must be scheduled to be staffed by at least five (5) officers as required by *City of Las Cruces v. Bentancourt, 1987-NMAC-039*, and must last a minimum of four (4) hours. The number of officers staffing an SC must meet the amount required by *Bentancourt* but not exceed the number detailed in the Grantee's Operational Plan. If the SC is not staffed with the minimum number of officers or was not conducted for the minimum number of hours, the Grantee must submit a justification with the invoice for these services. The Department may deny the invoice for SCs based on the justification. DDEPs must deploy officers in high crash locations consistent with the enforcement plan. If the DDEPs were conducted in areas not consistent with the enforcement plan, the Grantee must submit a justification with the invoice for these services. The Department may deny the invoice for DDEPs based on the justification. The Grantee is encouraged to schedule SCs and DDEPs throughout the grant period with a focus on participating during the Superblitz Period, 3 Mini Superblitz Periods, and National DWI Mobilizations as identified below.

2. **Definitions.** For purposes of this exhibit, the following definitions apply:

"Agency Coordinator" means the person assigned by the Grantee to assume direct responsibility for administering all phases of the Agreement.

"Directed Enforcement Patrols" means activities that enforce traffic laws in areas consistent with the agency's operational plan.

"Operational Plan" means a plan based on the most current crash data that identifies the problem to be addressed, goals to be achieved, and the performance measures to be employed. The Grantee may update its operational plan as needed to align with current trends.

"Winter Superblitz Period" means November 17, 2023 to January 1, 2024.

"St. Patrick's Day Mini Superblitz Period" means March 9 to March 17, 2024.

"Cinco de Mayo May Mini Superblitz Period" means May 1 to May 7, 2024.

"National Occupant Protection Mobilization Click It Or Ticket Period" means May 20 to June 2, 2024.

"Fourth of July Mini Superblitz Period" means July 1 to July 8, 2024.

"National DWI Mobilization Period" means August 16 to September 2, 2024.

3. **Training and Qualifications.** The Agency Coordinator must attend the Department's Law Enforcement Coordinators symposium and other Department training as required. The Grantee shall notify the Department of any changes to its Agency Coordinator as soon as possible. The Grantee's participating officers must have law enforcement certifications in all areas necessary to conduct the services noted in Section 1 of this exhibit. The Grantee shall keep documentation of training and provide the Department with a list of certified officers on request.
4. **Reimbursement.** The Department will pay the Grantee for the actual cost paid to personnel that worked the SCs and DDEPs. Claims for payment must specify officers' actual hourly rate of overtime pay based on the Grantee's overtime policy; the Department will not pay any amount in excess of that rate or for any amount that is not above and beyond the officers normal duties. At minimum, the Grantee should submit quarterly claims no later than January 30th, April 30th, and July 30th during this Agreement period. The final claim shall be submitted no later than October 31, 2024. If the final claim is submitted after October 31, 2024, the claim must be accompanied by a justification letter. The Department may deny the claim.

Each claim must be on a form approved by the Department. The Department will pay the Grantee for the following:

- a. pay, including overtime, for officers conducting traffic safety DWI enforcement in areas consistent with the enforcement plan;
 - b. pay, including overtime, for officers attendance at administrative license revocation hearings and court hearings directly related to DWI arrests made while participating in the ENDWI program;
 - c. overtime costs for officers or authorized personnel to support activities directly related to the SCs and/or DDEPs conducted during the claim month. Authorized personnel may include dispatcher(s), transport personnel, and others as authorized by checkpoint supervisor or command staff. The Grantee can only claim up to ten percent (10%) of the total monthly claim amount;
 - d. in-state travel and related expenses for officers to attend DWI related training approved by the Department in advance to be reimbursed in accordance with 2.42.2 NMAC; and
 - e. the employer's portion of related FICA taxes for each reimbursed hour if payment of such is included as a provision in the agency's written policy, personnel rule, , municipal or county resolution, union, or association contract, or other document submitted to and accepted by the Department.
5. **Reporting.** *The Grantee must submit activity reports by the 20th of each month using the activity report form provided.* Activity reports must include the type of activity and types of citations issued. The Grantee must report all citations to the Motor Vehicle Division of the New Mexico Taxation and Revenue Department and to the appropriate court in accordance with New Mexico law. The Grantee must submit timely crash reports to the Department in accordance with NMSA 1978, Section 66-7-207. If the Grantee does not submit crash reports in accordance with NMSA 1978, Section 66-7-207, the Department may hold reimbursement claims until this provision is met.

6. **Funding.** The Department expects the funding source to be BIL 164 Transfer Funds and the Catalog of Federal Domestic Assistance (CFDA) number to be 20.608. However, both funding source and CFDA number are subject to change at the Department's discretion. The Grantee may transfer funds between budget categories only with prior written approval from the Department. The project's itemized budget is as follows:

Personal Services	\$3,569.00
Contractual Services	\$0.00
Commodities	\$0.00
Indirect	\$0.00
Other	\$0.00
TOTAL	\$3,569.00

7. **Goals.** Projected annual and five-year average alcohol-impaired fatality data indicate increasing numbers and rates of these fatalities from 2021 through 2026. The State's comprehensive set of proven countermeasure strategies and projects including ENDWI enforcement and media, law enforcement and prosecution support, supervised probation, drug courts, and court monitoring will assist the State in achieving reductions in these preventable fatalities. The State has set a 2024 annual target of 150 alcohol-impaired fatalities, with reductions each year through 2026.
8. **Equipment.** The Grantee may only purchase equipment under this Agreement with prior written approval of the Department.

Exhibit B: Scope of Work, Training, Reimbursement and Reporting

BUCKLE UP (BKLUP) and CLICK IT OR TICKET (CIOT) Project Number: 04-OP-RF-104

- 1. Scope of Work.** The Grantee shall conduct occupant protection directed enforcement patrols (ODEPs) in high crash locations identified in data compiled by local, state or federal government agencies and contained in the Grantee's Operational Plan. The Department encourages the Grantee to accompany the ODEPs with public information, media and educational activities. ODEPs must deploy officers in high crash locations consistent with the enforcement plan for occupant protection issues. If the ODEPs were conducted in areas not consistent with the enforcement plan, the Grantee must submit a justification with the invoice for these services. The Department may deny the invoice for ODEPs based on the justification. The Grantee is encouraged to schedule ODEPs throughout the grant period with a focus on participating during the Superblitz Period, 3 Mini Superblitz Periods, National DWI Mobilizations and the National Click It or Ticket Mobilizations identified below.

- 2. Definitions.** For purposes of this exhibit, the following definitions apply:

"Agency Coordinator" means the person assigned by the Grantee to assume direct responsibility for administering all phases of the Agreement.

"Directed Enforcement Patrols" means activities that enforce traffic laws in areas consistent with the agency's operational plan.

"Operational Plan" means a plan based on the most current crash data that identifies the problem to be addressed, goals to be achieved, and the performance measures to be employed. The Grantee may update its operational plan as needed to align with current trends.

"Winter Superblitz Period" means November 17, 2023 to January 1, 2024.

"St. Patrick's Day Mini Superblitz Period" means March 9 to March 17, 2024.

"Cinco de Mayo May Mini Superblitz Period" means May 1 to May 7, 2024.

"National Occupant Protection Mobilization Click It Or Ticket Period" means May 20 to June 2, 2024.

"Fourth of July Mini Superblitz Period" means July 1 to July 8, 2024.

"National DWI Mobilization Period" means August 16 to September 2, 2024.

- 3. Training and Qualifications.** The Agency Coordinator must attend the Department's Law Enforcement Coordinators symposium and other Department training as required. The Grantee shall notify the Department of any changes to its Agency Coordinator as soon as possible. The Grantee's participating officers must have law enforcement certifications in all areas necessary to conduct the services noted in Section 1 of this exhibit. The Grantee shall keep documentation of training and provide the Department with a list of certified officers on request.

4. **Reimbursement.** The Department will pay the Grantee for the actual cost paid to personnel that worked the SCs and DDEPs. Claims for payment must specify officers' actual hourly rate of overtime pay based on the Grantee's overtime policy; the Department will not pay any amount in excess of that rate or for any amount that is not above and beyond the officers normal duties. At minimum, the Grantee should submit quarterly claims no later than January 30th, April 30th, and July 30th during this Agreement period. The final claim shall be submitted no later than October 31, 2024 on a form approved by the Department. If the final claim is submitted after October 31, 2024, the claim must be accompanied by a justification letter. The Department may deny the claim.

The Department will pay the Grantee for the following:

- a. pay, including overtime, for officers conducting traffic safety occupant protection focused enforcement in areas consistent with the enforcement plan;
 - b. attendance at, and excess per diem for, operation safe kids training and the four-day NHTSA standardized child passenger safety training; and
 - c. assistance at child safety seat clinics or car seat fitting stations.
 - d. the employer's portion of related FICA taxes for each reimbursed hour if payment of such is included as a provision in the agency's written policy, personnel rule, municipal or county resolution, union, or association contract, or other document submitted to and accepted by the Department.
5. **Reporting.** *The Grantee must submit activity reports by the 20th of each month using the activity report form provided unless otherwise directed by the Department.* Activity reports must include the type of activity and types of citations issued. The Grantee must report all citations to the Motor Vehicle Division of the New Mexico Taxation and Revenue Department and to the appropriate court in accordance with New Mexico law. The Grantee must submit timely crash reports to the Department in accordance with NMSA 1978, Section 66-7-207. If the Grantee does not submit crash reports in accordance with NMSA 1978, Section 66-7-207, the Department may hold reimbursement claims until this provision is met.
6. **Funding.** The Department expects the funding source to be state road fund. However, the funding source is subject to change at the Department's discretion. The Grantee may transfer funds between budget categories only with prior written approval from the Department. The project's itemized budget is as follows:

Personal Services	\$1,075.00
Contractual Services	\$0.00
Commodities	\$0.00
Indirect	\$0.00
Other	\$0.00
TOTAL	\$1,075.00

7. **Goals.**

- a. Projected annual and five-year average occupant fatality data indicate increasing

numbers and rates of these fatalities from 2021 through 2026. Given the State's comprehensive set of proven countermeasure strategies and associated projects, including enforcement of primary seat belt and child restraint use laws, high-visibility media, and child safety seat distribution system, the State has set a 2024 five-year average target of 138.5 occupant fatalities, with reductions each year through 2026.

- b. The State anticipates being able to increase its seat belt use to at least 90 percent over the next three years, and although projections indicate a decline in these numbers through 2026, the State has determined to set targets of 90 percent in 2024, 2025 and 2026.

- 8. **Equipment.** The Grantee may only purchase equipment under this Agreement with prior written approval of the Department.

Exhibit C: Scope of Work, Training, Reimbursement and Reporting

SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) and SUMMER ENFORCEMENT PERIOD Project Number: 04-PT-RF-104

1. **Scope of Work.** The Grantee shall conduct directed enforcement patrols (DEPs) in high crash locations identified in data compiled by local, state or federal government agencies and contained in the Grantee's Operational Plan. The Department encourages the Grantee to accompany the DEPs with public information, media and educational activities. DEPs must deploy officers in high crash locations consistent with the Operational Plan. If the DEPs were conducted in areas not consistent with the Operational Plan, the Grantee must submit a justification with the invoice for these services. The Department may deny the invoice for DEPs based on the justification. *The Grantee is encouraged to schedule DEPS through the grant period with a focus on participating during the Summer enforcement period which runs June 19, 2024 through September 21, 2024.*
2. **Definitions.** For purposes of this exhibit, the following definitions apply:

"Agency Coordinator" means the person assigned by the Grantee to assume direct responsibility for administering all phases of the Agreement.

"Directed Enforcement Patrols" means activities that enforce traffic laws in areas consistent with the agency's operational plan.

"Operational Plan" means a plan based on the most current crash data that identifies the problem to be addressed, goals to be achieved, and the performance measures to be employed. The Grantee may update its operational plan as needed to align with current trends.
3. **Training and Qualifications.** The Agency Coordinator must attend the Department's Law Enforcement Coordinators symposium and other Department training as required. The Grantee shall notify the Department of any changes to its Agency Coordinator as soon as possible. The Grantee's participating officers must have law enforcement certifications in all areas necessary to conduct the services noted in Section 1 of this exhibit. The Grantee shall keep documentation of training and provide the Department with a list of certified officers on request.
4. **Reimbursement.**

The Department will pay the Grantee for the actual cost paid to personnel that worked the SCs and DDEPs. Claims for payment must specify officers' actual hourly rate of overtime pay based on the Grantee's overtime policy; the Department will not pay any amount in excess of that rate or for any amount that is not above and beyond the officers normal duties. At minimum, the Grantee should submit quarterly claims no later than January 30th, April 30th, and July 30th during this Agreement period. The final claim shall be submitted no later than October 31, 2024 on a form approved by the Department. If the final claim is submitted after October 31, 2024, the claim must be accompanied by a justification letter. The Department may deny the claim.

The Department will pay the Grantee for the following:

- a. Pay, including overtime pay, for officers conducting the traffic safety enforcement described in paragraph 1 of this **Exhibit C**; and
 - b. training for officers as approved by the Department. Pay for travel and traffic safety related training
 - c. the employer's portion of related FICA taxes for each reimbursed hour if payment of such is included as a provision in the agency's written policy, personnel rule, municipal or county resolution, union, or association contract, or other document submitted to and accepted by the Department.
5. **Reporting.** *The Grantee must submit activity reports by the 20th of each month using the activity report form provided unless otherwise directed by the Department.* Activity reports must include the type of activity and types of citations issued. The Grantee must report all citations to the Motor Vehicle Division of the New Mexico Taxation and Revenue Department and to the appropriate court in accordance with New Mexico law. The Grantee must submit timely crash reports to the Department in accordance with NMSA 1978, Section 66-7-207. If the Grantee does not submit crash reports in accordance with NMSA 1978, Section 66-7-207, the Department may hold reimbursement claims until this provision is met.
6. **Funding – STEP.** The Department expects the funding source to be State Road Fund. However, the funding source is subject to change at the Department's discretion. The Grantee may transfer funds between budget categories only with prior written approval from the Department. The project's itemized budget is as follows:

Personal Services	\$7,568.00
Contractual Services	\$0.00
Commodities	\$0.00
Indirect	\$0.00
Other	\$0.00
TOTAL	\$7,568.00

7. **Goals.**

- a. Annual and five-year average speeding-related fatality data indicate increasing numbers and rates of such fatalities from 2021 through 2026. The State's Police Traffic Services program is focused on all dangerous driving behaviors, including speeding. The proven countermeasures focused on high-visibility enforcement will support the State's efforts to reduce these fatalities by prioritizing identified high-risk community streets and roadways, and by providing support and training to law enforcement officers. The State has set a 2024 annual target of 170 speeding-related fatalities, with reductions each year through 2026.
- b. Annual and five-year average alcohol-impaired fatality data indicate increasing numbers and rates of these fatalities from 2021 through 2026. The State's comprehensive set of proven countermeasure strategies and projects including ENDWI enforcement and media, law enforcement and prosecution support, supervised probation, drug courts and court monitoring will assist the State in achieving reductions in these preventable fatalities. The State has set a 2024 annual target of 150 alcohol impaired fatalities, with reductions each year

through 2026.

- c. Annual and five-year average occupant fatality data indicate increasing numbers and rates of these fatalities from 2021 through 2026. Given the State's comprehensive set of proven countermeasure strategies and associated projects, including enforcement of primary seat belt and child restraint use laws, high-visibility media, and child safety seat distribution system, the State has set a 2024 five-year average target of 138.5 occupant fatalities, with reductions each year through 2026.
- d. The State anticipates being able to increase its seat belt use to at least 90 percent over the next three years, and although projections indicate a decline in these numbers through 2026, the State has set targets of 90 percent seat belt use in 2024, 2025 and 2026.
- e. Five-year average fatalities indicate increasing fatalities from 415.6 in 2021 to 470.4 in 2024; however the State has set a 2024 five-year target of 450.0 fatalities, with reductions in 2025 and 2026.
- f. The methodology used to project five-year average suspected serious injuries indicate decreasing levels between 2021 to 2024, with levels more in the 2021 range in 2025 and 2026; however the State has set a 2024 five-year target of 1,018.6 serious injuries, with reductions through 2026.
- g. Five-year average motorcyclist data indicate between 50 and 52 motorcyclist fatalities between 2021 and 2024, with slightly higher projections for 2025 and 2026. The State's Motorcycle Safety Program projects focused on Motorcyclist Rider Training, includes highlighting dangerous driving behaviors, such as impaired driving and non-helmet driving or riding. NMDOT also supports motorcycle safety awareness, communications and outreach to both motorcyclists and other vehicle drivers. The State has set a 2024 five-year average target of 49.8 motorcyclist fatalities, with reductions each year through 2026.
- h. Projected annual data for under-21 drivers in fatal crashes indicate a reduction in these crashes from a high of 66 in 2021 to 50 (per 2022 preliminary data); however projected data indicate higher numbers of these crashes from 2023 through 2026. The State-funded Driver Education and Driver Safety Program aims to provide quality and comprehensive driver safety education throughout the State to novice drivers with the goal of reducing preventable fatalities. The State has set a 2024 annual target of 60 under -21 fatal crashes, with reductions each year through 2026.
- i. 2021 pedestrian fatalities were at their highest level in over a decade at 102 in 2021, rising from 79 in 2020. 2022 preliminary data indicate a slight decrease to 94, but projections for 2024-2026 are indicating higher numbers of these fatalities. To assist the State with responding to these projected rises in fatalities, the NMDOT plans to work with NHTSA to facilitate a pedestrian program assessment in 2024. The State has set a 2024 annual target of 95 pedestrian fatalities, with reductions each year through 2026.
- j. 2021 five-year bicyclist fatalities were at their highest level in the last five years. Although the five-year average is expected to go up slightly in 2022, projections indicate a downward trend and given this, the State has set a 2024 five-year average target of 6.0 bicyclist fatalities, with reductions each year through 2026.

- 8. **Equipment.** The Grantee may only purchase equipment under this Agreement with prior written approval of the Department.

Appendix A to Part 1300—Certifications and Assurances for Highway Safety Grants

[Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable caption.]

State: NEW MEXICO

Fiscal Year: 2024

By submitting an application for Federal grant funds under 23 U.S.C. Chapter 4 or Section 1906, Public Law 109-59, as amended by Section 25024, Public Law 117-58, the State Highway Safety Office acknowledges and agrees to the following conditions and requirements. In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following Certifications and Assurances:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended;
- Sec. 1906, [Public Law 109-59](#), as amended by Sec. 25024, [Public Law 117-58](#);
- [23 CFR part 1300](#)—Uniform Procedures for State Highway Safety Grant Programs;
- [2 CFR part 200](#)—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- [2 CFR part 1201](#)—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, *OMB Guidance on FFATA Subaward and Executive Compensation Reporting*, August 27, 2010, (https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf) by reporting to FSRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;
- Amount of the award;

- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
 - Unique entity identifier (generated by **SAM.gov**);
- The names and total compensation of the five most highly compensated officers of the entity if:
 - (i) the entity in the preceding fiscal year received—
 - (I) 80 percent or more of its annual gross revenues in Federal awards;
 - (II) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (ii) the public does not have access to information about the compensation of the senior executives of the entity 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;
- Other relevant information specified by OMB guidance.

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency [and its subrecipients] will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- *Title VI of the Civil Rights Act of 1964* ([42 U.S.C. 2000d](#) *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- [49 CFR part 21](#) (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- [28 CFR 50.3](#) (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, ([42 U.S.C. 4601](#)), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- *Federal-Aid Highway Act of 1973*, (*23 U.S.C. 324 et seq.*), and *Title IX of the Education Amendments of 1972*, as amended ([20 U.S.C. 1681-1683](#) and [1685-1686](#)) (prohibit discrimination on the basis of sex);
- *Section 504 of the Rehabilitation Act of 1973*, ([29 U.S.C. 794 et seq.](#)), as amended, (prohibits discrimination on the basis of disability) and [49 CFR part 27](#);
- *The Age Discrimination Act of 1975*, as amended, ([42 U.S.C. 6101 et seq.](#)), (prohibits discrimination on the basis of age);
- *The Civil Rights Restoration Act of 1987*, (Pub. L. 100-209), (broadens scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the

Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);

- *Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189)* (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and *49 CFR parts 37 and 38*;
- *Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- *Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency* (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
- *Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government* (advancing equity across the Federal Government); and
- *Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation* (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

GENERAL ASSURANCES

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including NHTSA.”

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

SPECIFIC ASSURANCES

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in § 21.23(b) and (e) of [49 CFR part 21](#) will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
“The [name of Recipient], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”
3. The Recipient will insert the clauses of appendix A and E of this Assurance (also referred to as DOT Order 1050.2A) ^[1] in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in appendix C and appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or

structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

- a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the State highway safety agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The State highway safety agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Recipient.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing a drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The grantee's policy of maintaining a drug-free workplace;

1. Any available drug counseling, rehabilitation, and employee assistance programs;
2. The penalties that may be imposed upon employees for drug violations occurring in the workplace;
3. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 1. Abide by the terms of the statement;
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—
 1. Taking appropriate personnel action against such an employee, up to and including termination;
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act ([5 U.S.C. 1501-1508](#)), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

1. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

INSTRUCTIONS FOR PRIMARY TIER PARTICIPANT CERTIFICATION (STATES)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of [2 CFR parts 180](#) and [1200](#).
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an

erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

1. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
2. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded**, as used in this clause, are defined in [2 CFR parts 180](#) and [1200](#). You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
3. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
4. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with [2 CFR parts 180](#) and [1200](#).
5. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate the transaction for cause or default.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY TIER COVERED TRANSACTIONS

1. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

INSTRUCTIONS FOR LOWER TIER PARTICIPANT CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of [2 CFR parts 180](#) and [1200](#).
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded**, as used in this clause, are defined in [2 CFR parts 180](#) and [1200](#). You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

1. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
2. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Instructions for Lower Tier Participant Certification” including the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with [2 CFR parts 180](#) and [1200](#).
3. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under [48 CFR part 9, subpart 9.4](#), debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
4. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
5. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under [48 CFR part 9, subpart 9.4](#), suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement ([23 U.S.C. 313](#)) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

CERTIFICATION ON CONFLICT OF INTEREST

(applies to subrecipients as well as States) GENERAL

REQUIREMENTS

No employee, officer, or agent of a State or its subrecipient who is authorized in an official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any subaward, including contracts or subcontracts, in connection with this grant shall have, directly or indirectly, any financial or personal interest in any such subaward. Such a financial or personal interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or personal interest in or a tangible personal benefit from an entity considered for a subaward. Based on this policy:

1. The recipient shall maintain a written code or standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.
 - a. The code or standards shall provide that the recipient's officers, employees, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subawardees, including contractors or parties to subcontracts.
 - b. The code or standards shall establish penalties, sanctions, or other disciplinary actions for violations, as permitted by State or local law or regulations.
2. The recipient shall maintain responsibility to enforce the requirements of the written code or standards of conduct.

DISCLOSURE REQUIREMENTS

No State or its subrecipient, including its officers, employees, or agents, shall perform or continue to perform under a grant or cooperative agreement, whose objectivity may be impaired because of any related past, present, or currently planned interest, financial or otherwise, in

organizations regulated by NHTSA or in organizations whose interests may be substantially affected by NHTSA activities. Based on this policy:

1. The recipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the recipient has taken or proposes to take to avoid or mitigate such conflict.
2. NHTSA will review the disclosure and may require additional relevant information from the recipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.
3. Conflicts of interest that require disclosure include all past, present, or currently planned organizational, financial, contractual, or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any recipient, affiliate, proposed consultant, proposed subcontractor, and key personnel of any of the above. Past interest shall be limited to within one year of the date of award. Key personnel shall include any person owning more than a 20 percent interest in a recipient, and the officers, employees or agents of a recipient who are responsible for making a decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE
(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with [Executive Order 13043](#), Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with [Executive Order 13513](#), Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

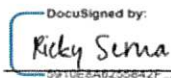
SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the annual grant application in support of the State's application for a grant under [23 U.S.C. 402](#) is accurate and complete.
2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. ([23 U.S.C. 402\(b\)\(1\)\(A\)](#))
3. At least 40 percent of all Federal funds apportioned to this State under [23 U.S.C. 402](#) for this fiscal year will be expended by or on behalf of political subdivisions of the State in carrying out local highway safety programs ([23 U.S.C. 402\(b\)\(1\)\(C\)](#)) or 95 percent by and on behalf of Indian tribes ([23 U.S.C. 402\(h\)\(2\)](#)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)
4. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. ([23 U.S.C. 402\(b\)\(1\)\(D\)](#))
5. As part of a comprehensive program, the State will support a data-based traffic safety enforcement program that fosters effective community collaboration to increase public safety, and data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities. ([23 U.S.C. 402\(b\)\(1\)\(E\)](#))
6. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:

- Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to—
 - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
 - Increase use of seat belts by occupants of motor vehicles;
 - Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
 - An annual statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on behalf of Indian tribes;
 - Development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
 - Coordination of triennial Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a); and
 - Participation in the Fatality Analysis Reporting System (FARS), except for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands
7. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))
8. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system, except in a work zone or school zone. (23 U.S.C. 402(c)(4))

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

[Click here to validate form fields and permit signature](#)

DocuSigned by:

 5910E8A6255E42F

7/31/2023

Signature Governor's Representative for Highway Safety

Date

Ricky Serna

Printed name of Governor's Representative for Highway Safety

New Mexico Traffic Safety Division Project Information Sheet

Contract Number:					
Government Unit:	CITY OF TRUTH OR CONSEQUENCES				
Contract term:	(– 09/30/2024)				
Supplier Number:	0000054340		Address ID:		
Grantee Contact Info					
Project Director and Title:		Chief Louis Tavizon			
Phone:	505-246-4773		E-mail:	ltavizon@torcnm.org	
Agency Name:		Truth or Consequences Police Department			
Address:		507 McAdoo Street			
City, State ZIP:		T or C, NM 87901			
TSD Contact Info					
Program Manager:		Nick Rivera		Phone:	505-470-8907
TSD Finance:		Avalon Gabaldon		Phone:	505-660-8103
Budget Breakdown					
Funding	Project Number	Amount	Fund	Department Code	PO Number
ENDWI	04-AL-64-104	\$3,569.00	10010	5000000000	
BKLUP	04-OP-RF-104	\$1,075.00	20100	5100000000	
STEP	04-PT-RF-104	\$7,568.00	20100	5100000000	
Total		\$12,212.00			
PO Entered by TSD Finance:				Date:	
PO Approved by Contracts:				Date:	
Comments					



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.7

SUBJECT: Approval of Purchase Requisitions Over \$20,000
DEPARTMENT: Finance
DATE SUBMITTED: January 17, 2024
SUBMITTED BY: Mindee Holguin, CPO
WHO WILL PRESENT THE ITEM: Angie Gonzales, City Manager or Traci Alvarez, Assistant City Manager

Summary/Background:

Per Resolution No 46 20/21 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint Powers Agreements; Settlement Agreements; Purchases (Contract and Purchases More Than \$20,000)

Recommendation:

Approval Recommended by Finance Director

Attachments:

- Listing of Purchase Requisitions \$20,000 or More
- Purchase Requisitions, Procurement Documentation

Fiscal Impact (Finance): Choose an item.

As Per Total on Listing of Purchase Requisitions

Legal Review (City Attorney): Choose an item.

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

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

File Name: CC agendas 1-24-24

PURCHASE REQUISITION APPROVAL

2023-24 Fiscal Year

COMMISSION MEETING 01/24/2024

Number	Vendor Name	Description	Requested By	Department	Total Amount	Procurement Type
91481	Galls Parent Holdings, LLC	JAG Contingency Funding Grant PD Equipment	Chief Tavizon	Police Dept	\$ 23,333.38	
78995	Border International Truck	Change order for water Vactor Truck Repair Org \$13810.00	Arnie Castaneda	Water	\$ 20,078.24	
					\$ 43,411.62	

ATTEST:

Angela Torres, Clerk-Treasurer

Date _____

Amanda Forrister, Mayor

Date _____



City of Truth or Consequences

Finance Department | 505 Sims Street
Truth or Consequences, New Mexico 87901
Phone (575) 894-6673 Fax (575) 894-0363

CHANGE ORDER FORM

DATE: 1/9/2024

PO#: 78995

VENDOR: BORDER INTERNATIONAL TRUCKS

PO LINE ITEMS & AMOUNT(S) BEING INCREASED/DECREASE:

INCREASE/DECREASE line 02 TOTAL: \$ 3846.28

INCREASE/DECREASE line 06 TOTAL: \$ 2421.96

PO TOTAL BEFORE INCREASE/DECREASE: \$ 13810.00

PO TOTAL AFTER INCREASE/DECREASE: \$ 20078.24

JUSTIFICATION FOR INCREASE/DECREASE:

PO INCREASE/DECREASE(s) due to: THE INTIAL JOB COST MORE THAN THE QUOTE STATED. THERE WERE ADDED JOBS DONE THAT WERE UNKNOWN.

CHANGE ORDER SUBMITTED BY NAME & DIVISION:

Jamie Foreman

A handwritten signature in black ink, appearing to be "J Foreman", written over a horizontal line.

City of Truth or Consequences, Department of Water/Wastewater

PURCHASING DEPARTMENT USE ONLY

Date Approved: Click here to enter a date.

Approved by: Click here to enter text.

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims St.
Truth or Consequences, NM 87901
PH: (575) 894-6673
FAX: (575) 894-0363

PURCHASE ORDER**PO Number:** 78995**Date:** 10/11/2023**Requisition #:** 90904**Vendor #:** 5883

ISSUED TO: BORDER INTERNATIONAL TRUCKS
2701 W. AMADOR AVENUE
LAS CRUCES, NM 88005

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

ITEM	UNITS	VENDOR PART #	DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0		LABOR	504-3803-47421		0.00	2,600.00
2	0		TANDEM PUMP ASSY	504-3803-47421		0.00	10,000.00
3	0		MACHINE CHARGE	504-3803-47421		0.00	60.00
4	0		SHIPPING AND HANDLING	504-3803-47421		0.00	650.00
5	0		UNFORSEEN O RING AND HYDRAULIC FLUID	504-3803-47421		0.00	500.00
WATER VACTOR TRUCK REPAIR							

SUBTOTAL:	13,810.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	13,810.00

Chief Purchasing Office

Date: 10/11/2023

Director of Finance:

Requisition approved electronically.

City Manager:

Requisition approved electronically.

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



Sold Operations (Cont.)

JOB #3 18-18 MISC.

COMPLAINT r&r tandem pump

CAUSE

CORRECTION customer complaint of right pump locked up.. after inspecting found the right side pump u joint worn an needs replaced, the left pump driveline was removed, by hand pump would not turn.. removed an replaced left pump assembly removing hydraulic lines an installed new pump bleed lines an installed.. once powered unit up found the left pump was the only pump engaging.. further inspecting found unit has comand power going into the vactor control modual but no power coming out. wired pump b to pump a so that unit can be used as per request of service manager..

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
	LABOR 18-18	LABOR		2,535.00
1	400D/FLTACC135KK	FLEETRITE CONTACT CLEANER	9.62	9.62
1	400D/MN30T60228	PRESSURE SWITCH	134.44	134.44
2	400L/LUC10404	AW ISO 46 Hydraulic Oil/1x1/5	78.72	157.44
1	400U/2404-04-04	MJ X MP - MALE CONNECTOR - STE	1.66	1.66
1	400U/6801-12-10	MJ X MB 90? - STRAIGHT THREAD	9.54	9.54
8	400X/12G2	HOSE	13.00	104.00
1	400X/1340	HOSE END	66.91	66.91
1	400X/1586	12-12FJX	48.64	48.64
2	400X/16MJPLUG	PLUG	15.37	30.74
4	400X/4166	12MJ PLUG	8.08	32.32
1	400X/49293	PUM	3,763.66	3,763.66
1	400X/513391-30	PUMP	9,836.47	9,836.47
2	400X/749	4MJ PLUG	4.56	9.12
2	400X/750	PLUG	4.44	8.88
2	400X/753	PLUG	6.54	13.08
2	400X/761	4FJ CAP	4.74	9.48
2	400X/765	6FJ CAP	4.51	9.02
2	400X/766	CAP	8.08	16.16
4	400X/767	12FJ CAP	10.20	40.80
2	400X/771	16FJ CAP ADAPTER	10.43	20.86
2	400X/CTI 84944	ROCKER SWITCH	24.22	48.44
1	FRT	SHIPPING & HANDLING	250.00	250.00
1	HRDWAR	UNFORSEEN O RINGS , HYDRAULIC FLUID	500.00	500.00

Prepay: \$0.00 Parts: \$14,371.28 Labor: \$2,535.00 Misc: \$750.00 Sublet: \$0 \$17,656.28

JOB #4 12-12 ENGINE DIAGNOSTICS

COMPLAINT ENGINE LIGHT ON

CAUSE

CORRECTION

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
	LABOR 12-12	ENGINE DIAGNOSTICS		0.00

Prepay: \$0.00 Parts: \$0 Labor: \$0 Misc: \$0 Sublet: \$0 \$0.00



**Sold Operations (Cont.)****JOB #5 12-12 ENGINE DIAGNOSTICS**

COMPLAINT INSTALL NEW U JOINTS ON PTO DRIVELINE

CAUSE

CORRECTION customer request to inspect an replace u- joints.. replaced the left u- joints due to damaged components.. replaced the pump side u- joint for the right side shaft only..

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
	LABOR 12-12	ENGINE DIAGNOSTICS		292.50
3	400X/331	U JOINT	30.22	90.66

Prepay: \$0.00 Parts: \$90.66 Labor: \$292.50 Misc: \$0 Sublet: \$0 \$383.16

JOB #8 18-18 MISC.

COMPLAINT R&R INLET NOX SENSOR

CAUSE

CORRECTION ran health report, unit had active CEL on for intake NOX sensor, verified circuit ok, inspected harness and found it laying on top of exhaust and melted wires ad shorted to ground, removed fenders to access and remove NOX sensor from housing, removed intake air cleaner to access and remove sensor module from rear of engine, after repairs validated fault unit it went inactive, cleared inactive faults, road tested unit

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
	LABOR 18-18	MISC.		660.00
1	400C/4326873RX	SENSOR,NITROGEN OXIDE	657.29	657.29
-1	400C/4326873RX-CORE	(4326872D) SENSOR,NITROGEN OXI	265.63	-265.63
1	400C/4326873RX-CORE	(4326872D) SENSOR,NITROGEN OXI	265.63	265.63

Prepay: \$0.00 Parts: \$657.29 Labor: \$660.00 Misc: \$0 Sublet: \$0 \$1,317.29

Rejected Operations**JOB #6 18-18 MISC.**

COMPLAINT R&R BATTERIES

CAUSE

CORRECTION

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
	LABOR 18-18	MISC.		0.00
3	400D/FLTBTG31950	BAT, GRP,BATTERY, GROUP 31, 95	99.99	299.97
-3	400D/FLTBTG31950-CORE	BAT, GRP,BATTERY, GROUP 31, 95	33.75	-101.25
3	400D/FLTBTG31950-CORE	BAT, GRP,BATTERY, GROUP 31, 95	33.75	101.25
1	90010	MACHINE CHARGE	55.00	55.00

Prepay: \$0.00 Parts: \$0 Labor: \$0 Misc: \$0 Sublet: \$0 \$354.97





SERVICE INVOICE: R400029024:01

Authorization: Charges I represent that I am the purchaser ("Customer"), or am acting as a duly authorized agent of the purchaser ("Customer's Agent"), and I have the authority to bind this purchase of parts ("Parts"). Quotations on parts and labor are good for 30 days and are subject to change. In the event Customer fails to pay parts charges when they become due, Customer and Customer's Agent understand that Border International has the right to place a lien on the Vehicle to which the part is attached. I understand that all charges are due and payable by Customer at the Border International truck center location indicated above.

Disclaimer of Warranties: Returns/Refunds. ANY WARRANTIES ON THE PRODUCTS SOLD HEREBY ARE THOSE MADE BY THE MANUFACTURER. THE BORDER INTERNATIONAL TRUCK CENTER OR IDEALLEASE LEASING FACILITY LISTED ABOVE ("DEALER") HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE PRODUCTS OR SERVICES SOLD HEREBY. DEALER ASSUMES NO LIABILITY IN CONNECTION WITH THE SALE OF SAID PRODUCT OR SERVICES. ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS DOCUMENT. NO REFUNDS AFTER 30 DAYS. ELECTRICAL PARTS ARE NOT RETURNABLE.

Miscellaneous: Replaced parts will not be returned to Customer unless requested in writing by Customer or Customer's Agent at the time of repair. I agree that Border International ("Border") is not responsible for loss or damage to: (1) my Vehicle, (2) articles left in the Vehicle or (3) trailers (and cargo contained in trailers), whether such trailers are attached to or detached from the Vehicle, to include loss or damage due to Force Majeure event, including, but not limited to, Acts of God, Acts of Public Enemy, Acts of Public Authority, fire, theft or any other cause beyond Border's control. I agree Border is not responsible for any delays in repairs or any downtime, including without limitation, delays or downtime caused by the unavailability of parts, delays in parts shipments by the supplier or transporter. Should there be a need for Border to move or test drive my vehicle I hereby grant Border and its employees permission to operate the Vehicle on streets, highways or elsewhere for the purpose of testing, inspection and/or delivery.

LABOR	\$3,487.50
PARTS	\$15,119.23
MISC	\$750.00
SUBLET	\$0.00
PREPAY	\$0.00
SUBTOTAL	\$19,356.73
SHOP SUPPLIES	\$400.00
TAX	\$321.51
TOTAL	\$20,078.24

Please Remit Payment to:
RJ Border International LP
PO BOX 675130
Dallas, TX 75267-5130

AUTHORIZED BY _____ DATE _____

A CONVENIENCE FEE OF 3% WILL
BE ADDED FOR PAYMENTS MADE
WITH CREDIT CARDS





2701 W AMADOR AVE
LAS CRUCES, NM 88005
P: (575) 541-4259
F: (575) 541-9382

SERVICE INVOICE	
R400029024:01	
Date Invoiced:	12/05/2023
PO No:	78995
Terms:	NET10

BILL TO
CITY OF TRUTH OR CONSEQUENCES - 23454
505 SIMS
T OR C NM 87901
P: (575) 894-6673
F:

DELIVER TO
CITY OF TRUTH OR CONSEQUENCES - 23454
505 SIMS
T OR C NM 87901
P: (575) 894-6673
F:

SERVICE INVOICE: R400029024:01

DATE ARRIVED		DATE INVOICE	SALES TYPE	ADVISOR	TAG	TERMS	CUSTOMER REFERENCE	
10/3/2023 9:17:15AM		12/5/2023	SRET	MICHAEL		NET10	78995	
YEAR	MAKE	MODEL	VIN	CUSTOMER UNIT #	ENGINE HOURS	IN SERVICE	Component Serial #	ODOMETER
2018	INTERNATIONAL	7500	3HAWKTAR5JL367818	6921	2,222			10866

Sold Operations

JOB #1 12-12 ENGINE DIAGNOSTICS

COMPLAINT RIGHT SIDE HYDRAULIC PUMP SEIZED
CAUSE
CORRECTION

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
	LABOR 12-12	ENGINE DIAGNOSTICS		0.00
Prepay: \$0.00 Parts: \$0 Labor: \$0 Misc: \$0 Sublet: \$0				\$0.00





2701 W AMADOR AVE
LAS CRUCES, NM 88005
P: (575) 541-4259
F: (575) 541-9382

SERVICE ORDER	
R400029024	
Date Invoiced:	
PO No:	
Terms:	NET10

DEL TO
CITY OF TRUTH OR CONSEQUENCES - 23454
505 SIMS
TORC NM 87901
P: (575) 894-6673
F:

DELIVERY TO
CITY OF TRUTH OR CONSEQUENCES - 23454
505 SIMS
TORC NM 87901
P: (575) 894-6673
F:

SERVICE ORDER: R400029024

DATE ARRIVED	DATE INVOICE	SALES TYPE	ADVISOR	TAG	TERMS	CUSTOMER REFERENCE		
10/3/2023 9:17:15AM		SREB	MICHAEL		NET10			
YEAR	MAKE	MODEL	VIN	CUSTOMER UNIT #	ENGINE HOURS	IN SERVICE	Component Serial #	ODOMETER
2018	INTERNATIONAL	7500	3HAWKTARSJL367818	6921	2,222			10866

Estimate Operations

JOB #2 18-18 MISC.

COMPLAINT r&r tandem pump
CAUSE
CORRECTION

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD. PRICE
	LABOR 18-18	LABOR		2,535.00
1	400X/49600-30	TANDEM PUMP ASSY	9,948.86	9,948.86
1	90010	MACHINE CHARGE	55.00	55.00
1	ERT	SHIPPING & HANDLING	650.00	650.00
1	HRDWAR	UNFORSEEN O RINGS, HYDRAULIC FLUID	500.00	500.00
Parts: \$9,948.86 Labor: \$2,535.00 Misc: \$1,205.00 Sublet: \$0				\$13,688.86

ESTIMATE





REQUISITION

Requisition #: 91481

Date: 01/17/2024

Vendor #: 9041

ISSUED TO: GALLS PARENT HOLDINGS, LLC DBA
1340 RUSSELL CAVE ROAD
LEXINGTON, KY 40505-

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

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 JAG CONTINGENCY FUNDING GRANT PD		0.00 101-1007-44607	23,333.38
PO Description: JAG CONTINGENCY FUNDING GRANT PD EQUIPMENT Detailed Description: THE PD EQUIPMENT PURCHASED WITH THIS PO WILL BE REIMBURSED THROUGH JAG CONTINGENCY FUNDS 21-JAG-TORCC-SFY24				

Authorized By: _____

SUBTOTAL:	23,333.38
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	23,333.38



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.8

SUBJECT: Discussion/Action – State of NM Dept. of Economic Development Capital Appropriation Grant Agreement MainStreet Foch Street Project

DEPARTMENT: Community Development

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Funding will be used towards the MainStreet Foch Street Improvement Project. Appropriated amount is \$1,016,000.00 – City is the Fiscal Agent for this project. Design is 100% complete - Architect is awaiting final response from NMDOT. Once concurrence has been received from NMDOT they anticipate approximately 4 months for construction to start.

Recommendation:

Approve Grant Agreement

Attachments:

- Grant Agreement

Fiscal Impact (Finance): Yes

Project is a reimbursement grant – no match is required.

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 1-24-24

Revised 4-20-18

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. (SEE ATTACHMENT A) The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse² Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

² "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: _____
 Name: _____
 Title: _____
 Address: _____

Email: _____
 Telephone: _____

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
 Name: _____
 Title: _____
 Address: _____
 Email: _____
 Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Economic Development Department
 Name: Lucas Pedraza
 Title: Project Coordinator
 Address: EDD/MainStreet, PO Box 20003, Santa Fe, NM 87504-5003
 Email: Lucas.Pedraza@edd.nm.gov
 Telephone: 505-412-3963

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2026 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Truth or Consequences in partnership with and for the benefit of Truth or Consequences MainStreet may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Truth or Consequences in partnership with and for the benefit of Truth or Consequences MainStreet's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Truth or Consequences in partnership with and for the benefit of Truth or Consequences MainStreet or the Economic Development Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Truth or Consequences in partnership with and for the benefit of Truth or Consequences MainStreet."

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under an Economic Development Department Grant Agreement. Should the Economic Development Department early terminate the grant

agreement, the City of Truth or Consequences in partnership with and for the benefit of Truth or Consequences MainStreet may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Truth or Consequences in partnership with and for the benefit of Truth or Consequence MainStreet's only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Date

Signature of MainStreet President

By: _____
(Type or Print Name)

Date

ECONOMIC DEVELOPMENT DEPARTMENT

By:
Cabinet Secretary or Designee

Date

By:
Legal Counsel- Certifying legal sufficiency

Date

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1**

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

City

State

Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount (If Applicable): _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If Applicable): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (attach wire if first draw)I. ☐ Final Request for Payment (if Applicable)**III. Fiscal Year :** _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV.**Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.**V.****Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.Grantee Fiscal Officer
or Fiscal Agent (if applicable)

Grantee Representative

Printed Name

Printed Name

Date:

Date:

(State Agency Use Only)

Vendor Code: _____

Fund No.: _____

Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer

Date

Division Project Manager

Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee [# 1]

DATE: []

TO: Department Representative: []

FROM: Grantee: []

Grantee Official Representative: []

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: []

Grant Termination Date: []

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

Vendor or Contractor: []

Third Party Obligation Amount: []

Vendor or Contractor: []

Third Party Obligation Amount: []

Vendor or Contractor: []

Third Party Obligation Amount: []

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

Grant Amount (Minus AIPP if applicable): []

The Amount of this Notice of Obligation: []

The Total Amount of all Previously Issued Notices of Obligation: []

The Total Amount of all Notices of Obligation to Date: []

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

Department Rep. Approver: []

Title: []

Signature: []

Date: []

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**ATTACHMENT A
PROJECT DESCRIPTION & SCOPE OF WORK**

Name of Grantee(s): City of Truth or Consequences in partnership with and for the benefit of Truth or Consequences MainStreet

Grant Amount: \$1,016,000.00. The City of Truth or Consequences Capital Outlay Grant does not have a cash match, but the city will provide documentation of additional public investments in the district.

Project Name: Great Blocks on MainStreet: South Foch Street

Project Description: Design and construction of pedestrian safety improvements and amenities to South Foch Street.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.9

SUBJECT: Discussion/Action – USDA WSPI-1 (Water System Project Improvements PER 1) Construction Loan Offers

DEPARTMENT: Community Development

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

WSPI-1 Project design is complete and predevelopment loan funds have been depleted. The city must now obtain full project loan funds in the amount of \$4,811,000.00 and the term would be approximately 18-24 months to move into bid and construction. Funds would pay off the predevelopment loan. Letters of Commitment were submitted by:

- Bank of the SW - 5.5% up to 36 months and .75% loan origination fee and \$200 loan documentation fees
- 1st Savings Bank - 5.5% up to 24 months and 1% loan origination fee and \$500 documentation fees.
- RCAC - 5.5% up to 36 months and 1.125% loan fee and \$0 documentation fee (does not submit letter of commitment until after the loan has been approved)

Recommendation:

Offers were reviewed by Mark Valenzuela, Managing Principal, Bosque Advisors LLC with a verbal recommendation as noted – “BOSW is the better offer, given the reduction of the origination fee.” Bond Ordinance will be drafted and presented to Commission for approval to publish, public hearing and final adoption.

Attachments:

- Letter of Commitment – Bank of the Southwest
- Letter of Commitment – 1st Savings Bank
- USDA Letter of Conditions WSPI-1

Fiscal Impact (Finance): TBD

Dependent on loan offer acceptance

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 1-24-24



Member FDIC

True to you.

December 22, 2023

City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87109

Dear City Officials,

Thank you for considering Bank of the Southwest (BOSW) for your financing needs. BOSW is pleased to submit the following terms and conditions for City of Truth or Consequences Water System Improvements loan request. The Bank's Executive Loan Committee and Board of Directors are offering the following terms and conditions:

**Requested Loan Amount
and Purpose:**

\$4,811,000.00: For the Water System Improvements – Phase 1
Water Application Project.

Interest Rate

5.50% fixed for the term of the loan.

Terms:

36-month interim construction line of credit, with interest
payments due monthly.

Closing Costs:

All ordinary and customary closing costs such as, but not limited
to but not limited to, .75% loan origination and \$200 loan
documentation fees.

Collateral:

Lien on Net Revenues of Truth or Consequences Utility System.

Conditions:

Documentation of City's organization structure, including the
organization's legal authority to borrow funds and obligate the
proposed collateral. Minutes of the latest election/appointment
of officials, and approval to secure the subject loan. Resolution
approving the loan and authorizing signers for the loan.

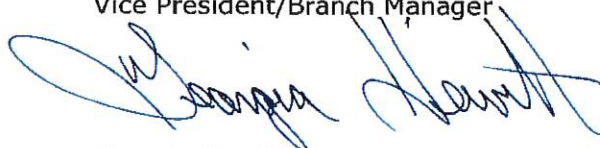
Terms proposed herein shall expire thirty (30) days from the date of this letter. Bank of the Southwest will require, among other terms and conditions, various conditions precedent to the initial advance.

These elements include certain customary representations and warranties as well as the above-described conditions, including documentation requested by legal review. Those matters which are not covered by or made clear herein are subject to mutual agreement of the parties and all matters are subject to amplification in the legal documentation.

We look forward to working with the City of Truth or Consequences on this project. If you have any questions or concerns, please feel free to call anytime. Once again, the staff of BSW would like to express appreciation to you for giving Bank of the Southwest this opportunity.

Sincerely,

Jason Garcia
Vice President/Branch Manager

A handwritten signature in blue ink, appearing to read "Jason Garcia", written over the printed name and title.

Georgia Hewitt
Executive Vice President/Chief Lending Officer



December 28, 2023

City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

RE: Truth or Consequences, City of Water System Improvements – Phase 1

Dear Mayor Forrister and City Manager Angie Gonzales--

Thank you for giving First Savings Bank (the "Bank") the opportunity to review your credit request. This term sheet is a basic outline of the terms and conditions currently being contemplated. This is not a commitment to lend, but merely an expression of our interest in providing the aforementioned financing request. The terms and conditions are subject to change in whole or part once our due diligence, credit analysis and underwriting is complete.

Borrowing Entity: City of Truth or Consequences

Requesting Loan Amount: Maximum Loan Amount of \$4,811,000.00 (Construction Cost for Project Funding for Water System Improvement) Commercial Draw Down Line of Credit. The maximum loan amount is based on the information we have been provided with.

Purpose: Draw Down Line of Credit to be used to install water meters and waterline replacements throughout the city in order to address the System High Pressure issues.

Collateral:

- Revenue bond with parity lien position in the amount of \$4,811,000.00.

Interest Rate:

- 5.50% Fixed with a 1% Origination Fee and Doc Fee of \$500.00

Maturity: 18 – 24 months

Payments: Monthly Interest only payments based on amount drawn.

Bank Origination Fee: 1% Origination Fee

Documentation: Borrower agrees to execute any and all documents necessary for Lender to perfect its first security interest in the collateral.

Reporting Requirements:

- Annual CPA Reviewed financial statement due within 120 days of fiscal year end
- Borrower's annual federal tax returns (including all schedules and K-1's) due within 30 days of filing.
- Any and all Financial information requested by the bank.

Covenants:

- Borrower shall at all times maintain a minimum Debt Service Coverage Ratio (DSCR) of 1.25X, measured annually on a rolling 12-month basis. DSCR is defined as EBITA (Earnings before Interest, Tax, Depreciation, and Amortization) divided by all Current Debt and Lease Payments.

Other Requirements:

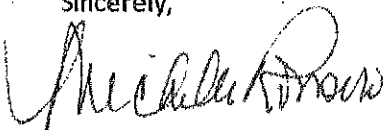
- Loan approval and offer to lend subject to First Savings Bank Board Approval
- Cash/Equity of 35% of cost and/or subject property appraised value and relevant invoices.
- No-Prepayment penalty for life of loan.
- Borrower shall maintain with First Savings Bank a business checking account.
- Should there be any attorney fees those would be the obligation of the borrower.

Again, this is a term sheet and not a commitment to lend. These terms and conditions are subject to change. Please note that this outline does not contain all terms, conditions and other provisions involved in this transaction that would be more fully described in the definitive legal documents(s) for the proposed transaction.

Should you wish to request First Savings Bank proceed with obtaining formal credit approval under the general terms and conditions outlined herein in this non-binding term sheet, please sign where indicated below.

This proposal constitutes only a general, non-binding expression of Interest on part of First Savings Bank. THIS PROPOSAL IS SUBJECT TO BANK'S CREDIT, LEGAL, AND INVESTMENT APPROVAL PROCESS AND IS NOT INTENDED TO AND DOES NOT CREATE A LEGALLY BINDING COMMITMENT OR OBLIGATION ON PART OF FIRST SAVINGS BANK. The creation of such a legally binding commitment or obligation is subject to, among other things, the completion by Bank of any in-depth investigation of the proposed investment, the results of which are deemed satisfactory by Bank and the negotiation, execution and delivery of definitive documents which are mutually agreed upon by borrower and First Savings bank and no occurrence of a material adverse change in business, financial condition, or prospect of borrower or any guarantor. This proposal is provided solely for your benefit and shall not be reproduced, distributed, quoted, or otherwise made reference to except between the senior management, officers and legal counsel of the borrower. Please review and sign and send back to Bank.

Sincerely,



Michelle Romero
Market President – Truth or Consequences
First Savings Bank

ACCEPTED BY:

Date



United States Department of Agriculture

Rural Development

August 24, 2021

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
505 Sims Street
Truth or Consequences, NM 87901

SUBJECT: Recipient Name: Truth or Consequences, City of
Project Name: Water System Improvements – Phase 1
Water Application
CFDA NUMBER 10.760 - Water and Waste Disposal Systems for
Rural Communities

Loan: \$ 4,811,000
Grant: \$ 2,720,000

Dear Mayor Whitehead:

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, 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. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 365 days of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

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 3 days:

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

The loan and grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be

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.

provided to you for your signature. After you sign and return the form to the Agency, the request will be processed, and loan and grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. Project Description – Funds will be used to install water meters and waterline replacements which entails the water transmission lines including pressure relief valves (PRVs) throughout the city in order to address the System High Pressure issues. This project will replace approximately 4.9 miles of failing water lines due to age and condition of current infrastructure.

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) as concurred with by the Agency.

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

Agency Loan -	\$ 4,811,000
Agency Grant -	\$ 2,720,000
 TOTAL PROJECT COST -	 \$ 7,531,000.00

Funding is offered based on the amounts stated above. 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.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. 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>
Construction	\$4,930,683
NMGRT	\$461,019
Contingency	\$493,738
Engineering Fees	\$1,171,179
Includes:	
Predevelopment Work (PER/ER)	\$47,000
Design	\$554,850
Construction Administration	\$75,933
Resident Project Representation (Inspection)	\$235,270
Additional Services	\$168,475
NMGRT	\$89,651
Interest/Fees- Interim/Bridge	\$440,746
Legal Fees - Local Attorney	\$10,000
Legal Fees - Bond Counsel	\$21,000
Legal Fees - NMGRT	\$2,635
TOTAL	\$7,351,000

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget or scope.

SECTION II – LOAN AND GRANT TERMS

4 **Repayment** – 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.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, beginning one year after closing. For planning purposes, use a 1.375% interest rate and an amortization factor of 32.67, which provides for an annual payment of \$ 1,57,176.00. 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.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5 **Security** – The loan will be secured by a Revenue bond with parity lien position in the amount of \$4,811,000.00. 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.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. 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 1780-12, "Water and Waste System Grant Agreement," and RUS Bulletin 1780-27, "Loan Resolution." A draft of all security instruments, including draft bond resolution, must be reviewed, and concurred in by the Agency prior to advertising for bids. The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

6. **Electronic Payments** – Payments will be made on the day your payment is due 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.

7. **Construction Completion Timeframe** - All projects must be completed, and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. **Disbursement of Agency Funds** - Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. 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 to start of construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be executed, and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

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:

- a. The recipient receives less than \$120,000 in Federal awards per year.

- b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
- c. 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.
- d. A foreign government or banking system prohibits or precludes interest-bearing accounts.]

9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs and assist with debt service should the need arise. 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. Ten percent of the proposed loan installment would equal \$1,310 per month; this amount should be deposited monthly until a total of \$15,718 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 preliminary engineering report, 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.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – 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

- a. 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.
- b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.
- c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.
- d. **American Iron and Steel Requirements.** 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 5, 2017:
 - (1) No Federal funds made available for this fiscal year for the rural water, wastewater, 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.
 - (4) Owners are ultimately responsible for compliance with AIS requirements and will be responsible for the following:

- (a) **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.
- (b) **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.
- (c) **Obtaining** the certification letters from the consulting engineer upon substantial completion of the project and **maintaining** this documentation for the life of the loan.
- (d) 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.
- (e) 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.

13. Legal Services – You have been required to execute a legal services agreement 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.

14. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain 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.

- e. **Preliminary Title Work (Title Opinion)** – When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, “Preliminary Title Opinion,” may be used.

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.

15. 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 an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant’s governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

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.

- a. **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.
- b. **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.
- c. **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. – Village of Williamsburg Water System Service Agreement – The draft agreement must receive Agency concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements 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.

16. 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). Closing instructions must be obtained prior to advertising for bids.

17. Interim Financing – For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. Construction Account – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other 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. Financial institutions or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

19. System Users – This letter of conditions is based upon your indication at application that there will be at least 2,741 residential users and 540 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.

20. Other Funding – Prior to advertising for bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the commitment letter from each source.

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&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, 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&M 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. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, 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 three years at a minimum.

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

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. 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% 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.

26. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing

these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. Final Rights-of-Way – If any of the rights-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. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

- a. **Final Title Work** - Your attorney must furnish a separate final title opinion on all existing 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.

28. 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 or employee dishonesty bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers' Compensation** – In accordance with appropriate State laws.
- c. **Fidelity or Employee Dishonesty Bonds** – Include 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 workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
- d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy 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.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. Initial Compliance Review – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

30. Interim Financing - Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely 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. In addition, the following items are required prior to closing:

31. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/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 a VA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that a VA and ERP are completed prior to authorization to advertise for bids. The VA/ERP documents are not submitted to the Agency. Technical assistance is available in preparing these documents at no cost to you. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, 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 three years at a minimum.

32. 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 Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done on-line at: <http://sam.gov>. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

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, as defined by applicable State or Federal requirements, a certified operator 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

33. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. 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 pre-construction conference.

34. **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.

35. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any 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.

36. **Change Orders** – Prior Agency concurrence is required for all Change Orders.

37 **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.

38. Use of Remaining Funds – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- a. Remaining funds may be used for 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. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 45 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

39. 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 particular 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 information.

40. Reporting Requirements Related to Expenditure of Funds

- a. **Financial Audit**– An annual 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.

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.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of 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.

- b. **Reporting Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report

disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

41. 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.

42. 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 are able to 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.

43. 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.

44. Annual Financial Reporting/Audit Requirements – You are required to submit an annual financial report at the end of each of your fiscal years. The annual report will be certified by the appropriate organization official, and will consist of financial information, and a current rate schedule and listing of board members and their terms. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP) and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize 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 annual 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.

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. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent auditor meeting the requirements of generally accepted government auditing standards (GAGAS) and must be submitted within 9 months of your fiscal year end. With the submission of the audit report, you will be required to provide a current rate schedule and listing of board members and their terms.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of 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 or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

- 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. With the submission of the year-end report, you will be required to provide a current rate schedule and listing of board members and their terms.
- 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 or similar format to provide this information, and 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 the quarterly reports are no longer required.

45. 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 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. If you are interested, please contact our office for information.

46. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – You will be required to submit a certification to the servicing office every three years that the VA/ERP is current and covers all sites related to the facility. The documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, 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 three years at a minimum.

47. Insurance. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

48. 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.”

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.

49. Compliance Reviews and Data Collection – 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 7 CFR 1782 and other applicable regulations, statutes, and 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,

**CHRISTINE
GRIEGO**

Christine Griego
Acting Community Program Director

Digitally signed by
CHRISTINE GRIEGO
Date: 2021.08.24 15:56:13
-06'00'

Attachments

cc: Community Programs Director
Accountant
Attorney
Bond Counsel
Engineer

ACRONYMS:

ABA - Architectural Barriers Act
ACH – Automated Clearing House
AD – Agriculture Department
ADA – Age Discrimination Act
AIS – American Iron and Steel
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
CPAP – Commercial Programs Application Processing
DUNS – Dun and Bradstreet Data Universal Numbering System
EJCDC – Engineers Joint Contract Documents Committee
ERP – Emergency Response Plan
GAAP – Generally Accepted Accounting Principles
GAGAS – Generally Accepted Government Auditing Standards
LEP – Limited English Proficiency
NPA – Nationwide Programmatic Agreement
OC – Owner Construction
OPS – Owner-Performed Services
O&M – Operation and Maintenance
PER – Preliminary Engineering Report
RD – Rural Development
RUS – Rural Utilities Service
SAM – System for Award Management
SF – Standard Form
UCC – Uniform Commercial Code
USC – United States Code
USDA – United States Department of Agriculture
VA – Vulnerability Assessment

FORMS and BULLETINS:

Form AD-3031 "Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants" – Item 29

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

Form RD 440-22, "Promissory Note" – Item 5

Form RD 440-24, "Position Fidelity Schedule Bond" – Item 28

Form RD 442-2, "Statement of Budget, Income and Equity" – Items 44 and 45

Form RD 442-3, "Balance Sheet" – Item 44

Form RD 442-7, "Operating Budget" – Item 21

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 27

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

Form RD 1942-8, "Resolution of Members or Stockholders" – Item 5

Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 1

Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 6 and 30

Form UCC-1, "Financing Statement" – Item 5

Form UCC-1Ad, "UCC Financing Statement Addendum" – Item 5

SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Items 8 and 18

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

RUS Bulletin 1780-9, "Water Users Agreement" - Items 15 and 19

RUS Bulletin 1780-12, "Water and Waste System Grant Agreement" – Page 1 and Item 5

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 5

RUS Bulletin 1780-28, "Loan Resolution Security Agreement" – Item 5

Appendix A
2 CFR Part 25

**SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER
REQUIREMENTS**

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another appendix.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this appendix) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this appendix:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this appendix, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and

- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

Appendix B
2 CFR Part 170

Reporting Subawards and Executive Compensation

a. Reporting of first tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this appendix, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this appendix).
2. **Where and when to report.**
 - i. You must report each obligating action described in paragraph a.1. of this appendix to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. **What to report.** You must report the information about each obligating action listed in the submission instructions posted at <http://www.fsrs.gov>.

b. Reporting Total Compensation of Recipient Executives.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your 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

- iii. 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/execomp.htm>.)
 - 2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this appendix:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
- 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this appendix, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its 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 (and subawards); and
 - ii. 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/execomp.htm>.)
 - 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this appendix:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month

of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this appendix:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

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Sincerely,

Elizabeth Ybarra
Loan Specialist – Water and Environmental Programs

Enclosure (if applicable)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.10

SUBJECT: City of Truth or Consequences City Building (297 W. 3rd Ave) Tenant Lease Agreement
DEPARTMENT: City Manager's Office
DATE SUBMITTED: January 18, 2024
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: City Manager Gonzales

Summary/Background:

This is a lease agreement between the City and Joe Cross for Mayor, LLC to rent the municipal court building for office/set space from February 1, 2024 through June 30, 2024.

Recommendation:

Approve

Attachments:

- Tenant Lease Agreement
- -

Fiscal Impact (Finance): Yes

\$400.00 per month.

Legal Review (City Attorney): Yes

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

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

File Name: CC agendas 1-24-24

**CITY OF TRUTH OR CONSEQUENCES
CITY BUILDING (297 W. 3RD AVE)
TENANT LEASE AGREEMENT**

THIS TENANT LEASE AGREEMENT (Agreement) is made between **THE CITY OF TRUTH OR CONSEQUENCES (City)**, and **JOE CROSS FOR MAYOR, LLC (Lessee)**.

WHEREAS, the parties agree as follows:

1. Property Leased:

In consideration of the conditions and covenants herein, Lessor leases the following described property (Premises) at 297 W. 3rd Avenue:

A Two-thousand six-hundred thirty-two (2,632) Foot office building located at 297 W. 3rd Avenue, Truth Or Consequences, New Mexico 87901.

2. Term:

This agreement shall be for a six (6) month term commencing on February 1, 2024, and shall expire on June 30, 2024 unless terminated sooner pursuant to Section 13, Right to Terminate, below.

3. Rent:

Lessor and Lessee acknowledge that Lessee shall pay Four Hundred Dollars (\$400.00) per month. Payment will be due on the 15th day of each month, beginning on February 15, 2024

4. Use of Leased Property:

Lessee shall use the Premises for office/filming. Lessee shall not violate or tolerate or permit others to violate, federal, state, or applicable local criminal or civil laws, regulations, rules or ordinances, including Lessor's terms of this Agreement on the Premises. Any such violation shall be grounds for Lessor, in the sole exercise of its discretion, to terminate this Agreement immediately by giving written notice to Lessee at the address set forth below.

5. Condition of Premises:

Lessee hereby assumes any and all risks to Lessee, Lessee's invitees, or social guests that may result from any dangerous or unsafe conditions on the Premises.

6. Utilities:

Lessee shall be responsible for providing phone and internet services on the leased premises.

7. Alterations and Improvements:

Lessee shall not make any alterations or improvements to the Premises without Lessor's prior written approval. All of Lessee's alterations and improvements made to or placed on the Premises that can be removed without undue damage to the Premises are, and shall remain, Lessee's property except as Lessor and Lessee mutually agree in writing. Lessee's alterations and improvements of a permanent nature that cannot be removed without undue damage to the Premises shall become Lessor's property, except as the parties mutually agree otherwise in writing.

8. Condition of Premises on Termination of Lease:

At this Agreement's termination, Lessee shall surrender the Premises in the condition in which they were at the inception of this Agreement, normal wear and tear considered, excepting alterations, improvements, or conditions made with Lessor's written approval and any change, damage, or destruction not resulting from Lessee's willful act.

9. Right of Entry:

Lessor, or its agent, has a right to enter upon the premises to inspect, to make repairs and for other reasonable purposes, with Lessee's permission, which shall not be unreasonably withheld upon delivery of 24 hours written notice to Lessee. In an emergency, such as fire, Lessor or its agent may enter the Premises without securing Lessee's prior permission or the providing of 24-hour notice to Lessee but shall give Lessee written notice of entry as soon thereafter as practicable.

10. Duty to Maintain Premises:

Lessor has the duty to maintain the Premises in a safe condition and in good repair.

11. Right to Assign or Sublease:

Lessee has no right to assign or sublease the rights to the Premises or any part of them pursuant to this Agreement to any other individual or entity.

12. Liability:

During the term of this Agreement and any extension thereof, each party shall be liable for its' own acts or failures to act in accordance with this Agreement, and subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 et seq., and the New Mexico Civil Rights Act, NMSA 1978, Sections 41-4a-1 et seq.

13. Right to Terminate:

Either Lessor or Lessee may declare this Agreement terminated for any reason or no reason at any time. Notice of Termination shall be in writing to the other party. Lessee shall surrender the Premises within Thirty (30) days of receipt of Notice of Termination.

14. Amendments:

This Agreement shall not be altered or amended except by an instrument in writing executed by the parties.

15. Contact Information:

Any notice provided for or concerning this Agreement shall be in writing and shall be sufficiently given when sent by certified or registered mail to the parties' respective addresses, or at such other addresses as each party may provide to the other in writing. Lessor Contact: Angie Gonzales, City Manager, City of Truth or Consequences, 505 Sims Street, Truth or Consequences, New Mexico 87901, Telephone 575-894-6673. Lessee Contact: Ann Ruark-2500 Louisiana Blvd. SE, 4th Floor, Albuquerque, NM 87110

16. Applicable Law:

This Agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement.

LESSOR:

By: _____
ANGIE GONZALES, City Manager

Date: _____

LESSEE:

By: _____
ANN RUARK, Producer

Date: _____



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.11

SUBJECT: Discussion/Action-Flood Commission Project Funding

DEPARTMENT: City Manager's Office

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: City Manager Gonzales

Summary/Background:

County Flood Commissioner Sandy Jones would like to partner with the City to help fund projects.

Recommendation:

Approve

Attachments:

- -
- -

Fiscal Impact (Finance): Yes

-

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. [Click here to enter text.](#)

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

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

File Name: CC agendas 1-24-24



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.12

SUBJECT: Discussion/Update: Legislative Priorities for Our Representatives and Senators

DEPARTMENT: City Manager's Office

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: City Manager Gonzales

Summary/Background:

Discuss what legislative priorities the City would like to recommend to the Representatives and Senators.

Recommendation:

Approve

Attachments:

- -
- -

Fiscal Impact (Finance): Unknown

-

Legal Review (City Attorney): Choose an item.

-

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

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

File Name: CC agendas 1-24-24



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.13

SUBJECT: Discussion regarding the Sale of the City's Electric infrastructure.
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: January 18, 2024
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: City Manager Gonzales

Summary/Background:

Discussion regarding the Sale of the City's Electric infrastructure.

Recommendation:

None.

Attachments:

- None.
-

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-24-24



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.14

SUBJECT: Consideration to rescind the action of the City Commission in approving Ordinance No. 756 authorizing issuance and sale of \$4,500,000 City of Truth or Consequences Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023 for the purpose of acquiring, constructing, furnishing, equipping, beautifying, and making improvements to a Law Enforcement Facility

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Angela A. Torres, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: City Attorney Rubin

Summary/Background:

Consideration to rescind the action of the City Commission in approving Ordinance No. 756

Recommendation:

None.

Attachments:

- Ord. No. 756

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-24-24

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

The City Commission of the City of Truth or Consequences, New Mexico, met in regular session in full conformity with law and the rules and regulations of the City Commission at the City Commission Chambers, 405 West Third Street, Truth or Consequences, New Mexico, being the regular meeting place of the City Commission, on the 15th day of November, 2023, at the hour of 9:00 a.m. Upon roll call, the following members, which constitute a quorum of the City Commission, were found to be present:

Mayor: Amanda Forrister

**Commissioners: Rolf Hechler, Mayor Pro-Tem
Merry Jo Fahl, Commissioner
Destiny Mitchell, Commissioner
Shelly Harrelson, Commissioner**

Absent:

Thereupon, there was officially filed with the Mayor, each Commissioner and the City Clerk-Treasurer a copy of a proposed bond ordinance in final form.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
ORDINANCE NO. 756

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO GROSS RECEIPTS TAX IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2023 IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,500,000 FOR THE PURPOSE TO (1) ACQUIRE, CONSTRUCT, FURNISH, EQUIP, BEAUTIFY AND IMPROVE A PUBLIC SAFETY BUILDING FOR THE BENEFIT OF THE CITY AND ITS RESIDENTS, (2) TO REFINANCE, PAY AND DISCHARGE CERTAIN OF THE CITY'S OUTSTANDING LOAN AGREEMENTS WITH THE NEW MEXICO FINANCE AUTHORITY, AND (3) PAY COSTS OF ISSUANCE OF THE SERIES 2023 BONDS; PROVIDING THAT THE SERIES 2023 BONDS WILL BE PAYABLE AND COLLECTIBLE FROM AND SECURED BY A PLEDGE OF THE GROSS RECEIPTS TAX DISTRIBUTED TO THE CITY PURSUANT TO SECTION 7-1-6.4 NMSA 1978, AS AMENDED; PROVIDING FOR THE DISPOSITION OF THE RECEIPTS DERIVED FROM SAID TAX PROCEEDS; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE SALE OF THE SERIES 2023 BONDS PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE SERIES 2023 BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE SERIES 2023 BONDS; RATIFYING ACTION PREVIOUSLY TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUE AND SALE OF THE SERIES 2023 BONDS.

Capitalized terms used in the following preambles are defined in Section 1 of this Bond Ordinance, unless the context requires otherwise.

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

WHEREAS, pursuant to Section 7-9-4 NMSA 1978, the State imposes a gross receipts tax on persons engaging in business in the State, and pursuant to Section 7-1-6.1 NMSA 1978, the City receives monthly distributions from the New Mexico Taxation and Revenue Department of a portion (currently 1.225% of the taxable gross receipts reported for the City for the month for which such remittance is made) of such gross receipts taxes; and

WHEREAS, pursuant to Sections 7-1-6.1 NMSA 1978 and Section 7-1-6.46, the City receives monthly distributions from the New Mexico Taxation and Revenue Department in lieu of gross receipts tax revenue that the City would have received but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978; and

WHEREAS, the Bonds shall be issued with a first (but not necessarily exclusively first) lien on the Pledged Revenues; and

WHEREAS, the City executed and entered into a loan agreement dated April 14, 2006 with the New Mexico Finance Authority in the original aggregate principal amount of \$266,152, with \$44,165 outstanding, which is payable from a 0.25% municipal gross receipts tax; and

WHEREAS, the City executed and entered into a loan agreement dated May 17, 2019 with the New Mexico Finance Authority in the original aggregate principal amount of \$103,833, with \$20,994 outstanding, which is payable from a 0.25% municipal gross receipts tax; and

WHEREAS, the City executed and entered into a loan agreement dated October 30, 2019 with the New Mexico Finance Authority in the original aggregate principal amount of \$1,433,058, with \$863,416 outstanding, which is payable from and secured by an irrevocable and first lien (but not necessarily an exclusively first lien) on the Pledged Revenues; and

WHEREAS, the City executed and entered into a loan agreement dated October 30, 2019 with the New Mexico Finance Authority in the original aggregate principal amount of \$888,657, with \$480,250 outstanding, which is payable from and secured by an irrevocable and first lien (but not necessarily an exclusively first lien) on the Pledged Revenues; and

WHEREAS, the City executed and entered into a loan agreement dated October 30, 2019 with the New Mexico Finance Authority in the original aggregate principal amount of \$228,432, with \$228,432 outstanding, which is payable from and secured by an irrevocable and first lien (but not necessarily an exclusively first lien) on the Pledged Revenues; and

WHEREAS, other than identified herein, the City has no outstanding obligations payable from the Pledged Revenues; and

WHEREAS, the City has determined that there is an urgent public need for the Improvement Project to be funded with certain of the proceeds of the Bonds; and

WHEREAS, pursuant to the redemption provisions contained therein, the Refunded Bonds are currently subject to prior redemption, at the option of the City, without penalty or prepayment premium; and

WHEREAS, the City has determined to pay all principal of and interest on the Refunded Bonds and to redeem all Refunded Bonds outstanding from the proceeds of the Bonds authorized by this Bond Ordinance; and

WHEREAS, the Commission determines that the issuance of the Bonds to finance the cost of refinancing, paying and discharging the Refunded Bonds, including without limitation the payment of administrative and incidental costs pertaining to the payment and discharge of the Refunded Bonds, as more fully provided in this Bond Ordinance, shall effect savings and economies, all to the benefit of the City and therefore shall provide for the public health, peace and safety of the City and its citizens; and

WHEREAS, the City may elect to receive an offer(s) to purchase the Bonds, potentially in one or more series, pursuant to a Bond Purchase Agreement(s), which will provide for an underwriting discount not to exceed 3% of the par amount of the Bonds and an original issue discount not to exceed 6% of the par amount of the Bonds, in either a negotiated public sale or through a private placement; and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides that any law which authorizes the pledge of any or all of the Pledged Revenues to the payment of any revenue bonds issued pursuant to the Act or which affects the Pledged Revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, including the Bonds, unless such outstanding revenue bonds, including the Bonds, have been discharged in full or provision has been fully made therefor; and

WHEREAS, Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, permit the City to issue revenue bonds for the Project and to pledge the Pledged Revenues to the payment of the interest on and principal of revenue bonds; and

WHEREAS, the Commission hereby determines that the Improvement Project and the Refunding Project are for a governmental purpose and are not projects which would cause the Bonds to be "private activity bonds" as defined by the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds; and

WHEREAS, all required authorizations, consents or approvals of any State governmental body, agency or authority for the authorization, execution and delivery of the Bonds which are required to have been obtained by the date of the adoption of the Bond Ordinance have been obtained, and which will be required to be obtained prior to the Closing Date, will have been obtained by that Closing Date.

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

Section 1. Definitions. As used in ordinance and any ordinance or resolution amendatory hereof or supplemental hereto, or relating hereto:

"Acquisition Fund" has the meaning specified in Section 18.

"Act" means Sections 3-31-1 to 3-31-12 and Sections 6-14-8 to 6-14-11 NMSA 1978, as amended, and all enactments of the Commission, including the Bond Ordinance, relating to the issuance of the Bonds.

"Authorized Officer" means the Mayor, Manager, Finance Director, Clerk-Treasurer or other officer or employee of the City when designated by a Certificate signed by the Mayor of the City from time to time.

“Bond Counsel” means an attorney or firm of attorneys nationally recognized as bond counsel.

“Bond Fund” has the meaning specified in Section 18.

“Bond Insurance Policy” means the financial guaranty insurance policy, if any, issued by the Bond Insurer insuring the payment when due of the principal and interest due on the Bonds as provided therein.

“Bond Insurer” means the municipal bond insurer, if any, as identified in the Sale Certificate.

“Bond Ordinance” means this City Ordinance No. 756 duly adopted on November 8, 2023.

“Bonds” means the “City of Truth or Consequences, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023” issued in one or more series.

“City” means the municipal body corporate and politic known as the City of Truth or Consequences, New Mexico.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Commission” means the City Commission of the City.

“Commitment” means the commitment from a Bond Insurer to the City for a Bond Insurance Policy.

“Continuing Disclosure Undertaking” means the continuing disclosure undertaking with respect to the Bonds to be executed on the day of the issuance and delivery of the Bonds to the Purchaser.

“Event of Default” has the meaning assigned in Section 28.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including the fees, premiums, compensation, costs and expenses paid or to be paid to the Purchaser, Bond Insurer and attorneys' fees.

“Federal Securities” means direct obligations of, or obligations the timely payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

"Fiscal Year" means the 12 months beginning on the first day of July of each calendar year and ending on the last day of June of the next calendar year, but it may mean any other 12-month period which any appropriate authority may hereafter establish for the its Fiscal Year.

"Improvement Project" means acquiring, constructing, furnishing, equipping, beautifying, or making improvements to a public safety building for the City.

"Independent Accountant" means any registered or certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State appointed and paid by the City who (i) is or are, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City, and includes the New Mexico State Auditor.

"Independent Counsel" means an attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of the City.

"Insured Bank" means a bank which is a member of the Federal Deposit Insurance Corporation.

"Insured Bonds" means any Bonds the payments on which are insured by a Bond Insurance Policy.

"Interest Payment Date" means June 1 and December 1 of each year (or if such day is not a Business Day, then the next succeeding Business Day), commencing on the date specified in the Sale Certificate.

"Minimum Reserve" means an amount which is equal to the lesser of (i) ten percent of the proceeds of the Bonds as the term proceeds is used in Section 148(d)(1) of the Code, (ii) the maximum annual debt service on the Bonds, or (iii) 125% of the average annual debt service on the Bonds.

"Outstanding" when used with reference to the Bonds and as of any particular date, means all Bonds theretofore executed by the City and authenticated by the Registrar except: (i) any Bonds cancelled or fully paid on or before such date; (ii) any Bond in lieu of or in substitution for which another Bond has been delivered pursuant to this Bond Ordinance; (iii) any Bond for the payment or redemption of which funds or securities permitted by Section 24 in the necessary amount have theretofore been deposited with the Paying Agent (whether upon or prior to the maturity or redemption date of such Bond); and (iv) for the sole purpose of determining the percentage of Owners consenting to any amendment to this Bond Ordinance or authorizing the exercise of any remedy hereunder, any Bonds owned by the City. For all other purposes, Bonds owned by the City which are not described in clauses (i), (ii) or (iii) shall be treated as Outstanding.

"Owner" means the registered owner of any Bond

"Parity Obligations" means the Bonds and other obligations payable from the Pledged Revenues currently outstanding or hereafter issued with a lien on the Pledged Revenues on parity with the Bonds.

"Paying Agent" means BOKF, NA, Albuquerque, New Mexico (or successor in function), as agent for the City for the payment of the principal of and interest and premium, if any, on the Bonds.

"Payment Date" means any date upon which any payment of principal of or interest on any Bond is scheduled to be made.

"Permitted Investments" means securities which are at the time legal investments of the City for the money to be invested, as applicable, including but not limited to the following if permitted by law: (i) direct obligations of, or obligations fully guaranteed by the United States of America or instruments evidencing ownership interests in those obligations or in specified portions of the principal of or interest on those obligations; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or Standard & Poor's Rating Group; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1 NMSA 1978, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Revenue Division of the Taxation and Revenue Department of the State to the City as authorized by Sections 7-1-6.1 and 7-1-6.4 NMSA 1978, and which remittances as of the date of adoption of this Bond Ordinance are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the City for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance..

"Preliminary Official Statement" or "Official Statement" means the disclosure document to be used by the Purchaser in connection with the sale of the Bonds to the public.

"Project" means the Improvement Project and the Refunding Project.

"Purchaser" means the original purchasers of the Bonds as identified in the Sale Certificate.

"Refunded Bond Requirements" means the principal of and interest and redemption premium, if any, on the Refunded Bonds when due on and until their dates of maturity or optional redemption.

"Refunded Bonds" means the outstanding 2006 NMFA Loan and 2019 NMFA Loan.

"Refunding Project" means the refinancing, paying and discharging of the Refunded Bonds, including without limitation the payment of administrative and incidental costs pertaining to the issuance of the Bonds and to the payment and discharge of the Refunded Bonds.

"Registrar" means BOKF, NA, Albuquerque, New Mexico (or successor in function), as registrar and transfer agent for the Bonds.

"Regular Record Date" means the 15th day of the calendar month (whether or not a business day) preceding each regularly scheduled interest payment date on the Bonds.

"Reserve Fund" has the meaning specified in Section 18.

"Reserve Fund Insurance Policy" means any policy of insurance, surety bond, letter of credit or other financial instrument issued to the City, the proceeds of which shall be used to prevent deficiencies in the payment of the principal of or interest on the Bonds resulting from insufficient amounts being on deposit in the Bond Fund to make the payment of principal of and interest on the Bonds as the same become due. Each policy shall be written by a bank, insurance company or any financial institution experienced in insuring or guaranteeing municipal bonds whose policies of insurance, surety bond, letter of credit or other financial instrument would not adversely affect the rating of the Bonds by Moody's and/or Standard & Poor's to the extent that the Bonds are to be so rated and provided that at the time of the issuance of such policy such bank, insurance company or any financial institution shall have received the highest policy claims rating accorded insurers by the A.M. Best Company or any comparable service, if applicable to the provider of the Reserve Fund Insurance Policy, and either of the two highest Rating Categories of Moody's and Standard & Poor's to the extent that each rating agency provides such a rating and is then rating the Bonds.

"Reserve Requirement" means an amount which is equal to the least of (i) ten percent (10%) of the proceeds of the Bonds as the term proceeds is used in Section 148(d)(1) of the Code, (ii) the maximum annual debt service on the Bonds, or (iii) one hundred twenty-five percent (125%) of the average annual debt service on the Bonds.

"Sale Certificate" means one or more certificates executed by the Mayor or Manager dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund or a debt service reserve account, including the size and

funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the federal tax status of the Bonds; (x) the method of sale; and (xi) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Bond Ordinance.

“Series Date” means the date of original issuance of each series of Bonds.

“Special Record Date” means a special date fixed to determine the names and addresses of registered owners of the Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest thereon, all as further provided in Section 6(b).

“State” means the State of New Mexico.

“State-Shared Gross Receipts Tax Income Fund” has the meaning specified in Section 18.

“2006 NMFA Loan” means the loan agreement between the City and the New Mexico Finance Authority executed on April 14, 2006 in the aggregate principal amount of \$165,152, and currently outstanding in the principal amount of \$44,165.

“2019 NMFA Loan” means the loan agreement between the City and the New Mexico Finance Authority executed on May 17, 2019 in the aggregate principal amount of \$103,833, and currently outstanding in the principal amount of \$20,994.

Section 2. Ratification. All action heretofore taken (not inconsistent with the express provisions of this Bond Ordinance) by the Commission and officers of the City directed toward the Project, and toward the authorization, sale and issuance of the Bonds is ratified, approved and confirmed.

Section 3. Authorization of Project. The Project and the method of financing the Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds. The Project is found and declared to be necessary.

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

A. Moneys available for the Project from all sources other than the issuance of revenue bonds are not sufficient to defray the cost of the Project.

B. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

C. It is economically feasible to defray, in part, the cost of the Improvement Project by the issuance of the Bonds.

D. The issuance of the Bonds, in one or more series, pursuant to the Act, to provide funds for the financing of the Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

E. The net effective interest rate on the Bonds, as set forth in the Sale Certificate, shall be less than 12% per annum, the maximum rate permitted by State law.

F. The underwriting discount shall not exceed 3% of the par amount of the Bonds and an original issue discount shall not exceed 6% of the par amount of the Bonds.

G. The final maturity of the Bonds shall not exceed thirty years from the date of issuance of the Bonds.

H. The issuance of the Bonds and the refunding of the Refunded Bonds will permit the retirement of debt to the benefit of the City and its residents.

I. The Project is needed to meet the needs of the City and its residents.

Section 5. Authorization of Bonds. This Bond Ordinance has been adopted by the affirmative vote of at least a three-fourth's ($3/4^{\text{th}}$) majority of all of the members of the Commission. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, revenue bonds, in one or more series, to be designated "City of Truth or Consequences, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023," in an aggregate principal amount not to exceed \$4,500,000. The issuance, sale and delivery of the Bonds are hereby authorized. The Project is authorized and approved. The Bonds may be sold to the Purchaser pursuant to a Bond Purchase Agreement at a publicly marketed negotiated sale, or private placement, pursuant to the terms in the Sale Certificate.

Section 6. Bond Details.

A. Basic Details. The Bonds shall be dated the date of delivery, are issuable in the denomination of \$5,000 each or any integral multiple thereof (provided that no Bond may be in a denomination which exceeds the principal coming due on any maturity date and no individual Bond will be issued for more than one maturity), numbered consecutively from 1 upwards, shall bear interest from their dated date until maturity at a rate of interest not to exceed twelve percent (12%) per annum, as set forth in the Sale Certificate, and shall be payable on June 1 and December 1 in each year as set forth in the Sale Certificate. The Bonds may be issued in one or more series. The exact principal amount, authorized denominations, transfer restrictions, if any, and maturity schedule for the Bonds shall be established in the Sale Certificate, subject to the parameters and conditions contained in this Bond Ordinance.

B. Payment. The principal of and any prior redemption premium applicable to any Bond shall be payable to the Owner thereof as shown on the registration

books kept by the Registrar (which is appointed as registrar and transfer agent for the Bonds), upon maturity or prior redemption thereof and upon presentation and surrender at the office of the Paying Agent (which is appointed as paying agent for the Bonds). If any Bond shall not be paid upon such presentation and surrender at or after maturity or on a designated prior redemption date on which the City may have exercised its right to prior redeem any Bond pursuant to Section 7, it shall continue to draw interest at the rate borne by the Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made to the registered owner thereof as of the Regular Record Date by check or draft mailed by the Paying Agent, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day without accruing any additional interest), to the Owner thereof on the Regular Record Date at such Owner's address as it last appears on the registration books kept by the Registrar on the Regular Record Date (or by such other arrangement as may be mutually agreed to by the Paying Agent and any registered owner on such Regular Record Date). All such payments shall be made in lawful money of the United States of America. The person in whose name any Bond is registered at the close of business on any Regular Record Date with respect to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding any transfer or exchange thereof subsequent to such Regular Record Date and prior to such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name any Bond is registered at the close of business on a Special Record Date fixed by the Paying Agent for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Paying Agent whenever moneys become available for defaulted interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the Owners of the Bonds as of a date selected by the Paying Agent, stating the Special Record Date and the date fixed for the payment of such defaulted interest.

Section 7. Prior Redemption.

A. Redemption. The Bonds may be subject to optional or mandatory sinking fund redemption prior to their stated maturities at the redemption price(s) and on the dates established in the Sale Certificate.

B. Notice by City. Unless waived by the Registrar, at least 45 days prior to any date selected by the City for prior redemption of any of the Bonds, the City shall give written instructions to the Registrar (and, if the Registrar is not also the Paying Agent, to the Paying Agent) with respect to such prior redemption.

C. Notice by Registrar. Additionally, notice of redemption shall be given by the Registrar by sending a copy of such notice by first class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption date to each Owner as shown on the registration books kept by the Registrar as of the date of selection of units of principal for redemption. The Registrar shall not be required to give notice of any prior redemption unless it has received written instructions from the City in regard thereof, at least 45 days prior to such redemption date or unless the 45-day deadline is waived by the Registrar. Failure to give such notice by mailing to the registered owner of any Bond, or any

defect therein, shall not affect the validity of the proceedings for the redemption of any of the Bonds for which proper notice was given.

D. Conditional Redemption. If money or Federal Securities sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph (C) of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent by 2:00 p.m. on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair by the City, and the Registrar shall give notice, in the manner in which the original notice of optional redemption was given, that such money was not received. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been redeemed.

E. Other Redemption Details. The notice required by Section 7(C) shall specify the number or numbers of the Bond or Bonds or portions thereof to be so redeemed (if less than all are to be redeemed); and all notices required by this Section 7 shall specify the date fixed for redemption, and shall further state that on such redemption date there shall become and be due and payable upon each \$5,000 unit of principal so to be redeemed at the office of the Paying Agent the principal thereof and the applicable prior redemption premium thereon (if any), and that from and after such date interest shall cease to accrue. Accrued interest to the redemption shall be paid by check or draft mailed to the Owner (or by alternative means if so agreed to by the Paying Agent and the Owner). Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation thereof at the office of the Paying Agent, the City shall pay the Bond or Bonds so called for redemption and the applicable prior redemption premium (if any). In the event that only a portion of the principal amount of a Bond is so redeemed, a new Bond representing the unredeemed principal shall be duly completed, authenticated and delivered by the Registrar to the Owner pursuant to Section 10 and without charge to the Owner thereof.

Section 8. Negotiability. Subject to the provisions specifically made or implied herein, the Bonds shall be fully negotiable, and shall have all the qualities of negotiable paper, and the Owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 9. Execution.

A. Method of Execution. Each Bond shall be executed by the manual or facsimile signature of the Mayor under the seal of the City; each Bond shall be executed and attested with the manual or facsimile signature of the City Clerk-Treasurer; and each Bond

shall be authenticated by the manual signature of an authorized officer of the Registrar as hereafter provided. The Bonds bearing the manual or facsimile signatures of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the City (subject to the requirement of authentication by the Registrar) notwithstanding that before the delivery thereof and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose manual or facsimile signatures appear thereon shall have ceased to fill their respective offices.

B. Certificate of Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 10. Registration, Transfer, Exchange, Replacement and Cancellation.

A. Registration Books; Transfer and Exchange. Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bonds at the office of the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at office of the Registrar for an equal aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds that the Owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the Owner or any transferee, but the Registrar may require the payment by the Owner of any Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

B. When Transfer or Exchange Not Required. The Registrar shall not be required: (i) to transfer or exchange all or a portion of any Bond subject to prior redemption during the period of 15 days next preceding the mailing of notice to the Owners calling any Bonds for prior redemption pursuant to Section 7; or (ii) to transfer or exchange all or a portion of a Bond after the mailing to registered owners of notice calling such Bond or portion thereof for prior redemption.

C. Payment to Registered Owners. The person in whose name any Bond shall be registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest as is provided in Section 6(B), and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the Owner thereof or the Owner's legal representative, but such registration may be changed upon transfer of such Bond in the

manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Replacement Bonds. If any Bond is lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond has matured, the Paying Agent may pay such Bond in lieu of replacement.

E. Delivery of Bond Certificates to Registrar. The officers of the City are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.

F. Cancellation of Bonds. Whenever any Bond is surrendered to the Paying Agent or Registrar upon payment thereof, or for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled by the Paying Agent or the Registrar, as the case may be, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or the Registrar, as the case may be, to the City.

Section 11. Book-Entry. Except as set forth in this Bond Ordinance, the Bonds shall be issued in book-entry form with no physical distribution of Bonds made to the public. The Depository Trust Company or any successor securities depository ("DTC") shall act as securities depository for the Bonds. A single certificate for each maturity of the Bonds shall be issued to DTC and immobilized in its custody. The book-entry system shall evidence ownership of the Bonds in principal amounts of \$5,000 or integral multiples thereof, with transfers of ownership effected on the records of DTC and its participants (the "Participants") pursuant to rules and procedures established by DTC and the Participants. As a condition to delivery of the Bonds, the Purchaser shall, immediately after acceptance of delivery thereof, deposit the Bonds with DTC, registered in the name of DTC or its nominee. Principal and interest shall be paid to DTC or its nominee as registered owner of the Bonds. Transfer of principal and interest payments to the Participants shall be the responsibility of DTC; transfer of principal and interest payment to beneficial owners of the Bonds (the "Beneficial Owners") by the Participants shall be the responsibility of the Participants and other nominees of the Beneficial Owners maintaining a relationship with the Participants. Neither the City, the Registrar nor the Paying Agent shall be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, the Participants or persons acting through the Participants. If (i) the Bonds are not eligible for DTC services, (ii) DTC determines to discontinue providing its services with respect to the Bonds, or (iii) the Registrar determines that a continuation of the system of book-entry transfers through DTC is not in the best interest of the Registrar or the Beneficial Owners, the Registrar shall either identify another qualified securities depository or cause physical Bonds to be delivered to the Beneficial Owners or their nominees and thereupon the Beneficial Owners or their nominees, upon authentication of the Bonds and registration of the Bonds in the Beneficial Owners' or nominees' name, shall become the Owners of the Bonds for all purposes. Upon the

occurrence of any such event, the Registrar shall mail an appropriate notice to DTC for notification to the Participants and the Beneficial Owners of the substitute depository or the issuance of Bonds to the Beneficial Owners or their nominees, as applicable. All notices and payments addressed to DTC shall contain the information required by, and sent as set forth in, the Letter of Representation executed by the City. Notices of redemption shall be given to DTC as provided in such Letter of Representation.

Section 12. Special Obligations. All of the Bonds, together with the interest accruing thereon, shall be payable and collectible solely out of the Pledged Revenues, which are irrevocably so pledged. The registered owner or owners thereof may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor; and the Bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the City; and each of the Bonds shall recite that it is payable and collectible solely from the Pledged Revenues, which are so pledged, and that the Owner thereof may not look to any general or other fund for the payment of principal and interest on, and prior redemption premium due in connection with, the Bonds.

Section 13. Forms of Bonds, Certificate of Authentication and Assignment. The Bonds and the related Certificate of Authentication and Form of Assignment shall be in substantially the following forms:

(Form of Bond)

UNITED STATES OF AMERICA
STATE OF NEW MEXICO
CITY OF TRUTH OR CONSEQUENCES

No. R-____

\$

GROSS RECEIPTS TAX
IMPROVEMENT AND REFUNDING REVENUE BONDS
SERIES 2023

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Series Date</u>	<u>CUSIP</u>
____ % per annum	June 1, 20____	____, 2023	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Truth or Consequences, New Mexico (the "City"), for value received, promises to pay upon presentation and surrender of this bond, solely from the special funds provided therefor as hereinafter set forth, to the registered owner named above, or registered

assigns, on the Maturity Date specified above (unless this bond, if subject to prior redemption, shall have been called for prior redemption in which case on such redemption date), upon the presentation and surrender hereof at the office of BOKF, NA, Albuquerque, New Mexico (or successor in function) of the City (the "Paying Agent"), the Principal Amount stated above, in lawful money of the United States of America, and to pay to the registered owner hereof as of the Regular Record Date (being the 15th day of the calendar month preceding each regularly scheduled interest payment date as defined in Ordinance No. 756, adopted on November 8, 2023, as supplemented by the Sale Certificate executed on _____, 2023 which authorizes this bond and which is referred to herein collectively as the "Bond Ordinance"), by check or draft mailed to such registered owner, on or before each interest payment date as hereinafter provided (or, if such interest payment date is not a business day, on or before the next succeeding business day without accruing any additional interest), at his address as it last appears on the Regular Record Date on the registration books kept for that purpose by the BOKF, NA, Albuquerque, New Mexico (or successor in function) of the City as registrar for the bonds (the "Registrar") or by such other arrangement as may be agreed to by the Paying Agent and the registered owner hereof, interest on said sum in lawful money of the United States of America from the Series Date specified above or the most recent interest payment date to which interest has been fully paid or duly provided for in full (as more fully provided in the Bond Ordinance) until maturity at the per annum Interest Rate specified above, payable on June 1, 2024 and semiannually thereafter on June 1 and December 1 in each year. Any such interest not so timely paid or duly provided for shall cease to be payable to the registered owner as of the Regular Record Date and shall be payable to the registered owner as of a Special Record Date (as defined in the Bond Ordinance), as further provided in the Bond Ordinance. If upon presentation and surrender to the Paying Agent at or after maturity or on a designated prior redemption date on which the City may have exercised its right to prior redeem this bond pursuant to the Bond Ordinance, payment of this bond is not made as herein provided, interest hereon shall continue at the rate herein designated until the principal hereof is paid in full.

The bonds of the series of which this bond is a part (the "Bonds") maturing on or after June 1, 20__ are subject to prior redemption at the option of the City in one or more units of principal of \$5,000 on and after June 1, 20__, in whole or in part at any time in such order of maturities as the City may determine (and by lot if less than all of the Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner as it shall consider appropriate and fair), for the principal amount of each \$5,000 unit so redeemed, accrued interest thereon to the redemption date. Redemption shall be made upon prior notice mailed to each registered owner of each bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

The Bonds are fully registered (i.e., registered as to payment of both principal and interest), and are issuable in the denomination of \$5,000 or any denomination which is an integral multiple of \$5,000 (provided that no bond may be in a denomination which exceeds the principal coming due on any maturity date and no individual bond shall be issued for more than one maturity).

This bond is fully transferable by the registered owner hereof in person or by his duly authorized attorney on the registration books kept by the Registrar upon surrender of this bond together with a duly executed written instrument of transfer satisfactory to the Registrar. Upon such transfer a new fully registered bond of authorized denomination or denominations of the same aggregate principal amount and maturity shall be issued to the transferee in exchange for this bond, subject to such terms and conditions as set forth in the Bond Ordinance. The City, the Paying Agent and the Registrar may deem and treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of making payment and for all other purposes.

This bond is one of a series of bonds designated "City of Truth or Consequences, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023" of like tenor and date, except as to interest rate, number and maturity, authorized for the purpose to (1) acquire, construct, furnish, equip, beautify and improve a public safety building for the benefit of the City and its residents, (2) refinance, pay and discharge certain outstanding debt of the City, and (3) pay costs of issuance of the Bonds.

This bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of New Mexico.

This bond does not constitute indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely from the Pledged Revenues. The "Pledged Revenues" are the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Revenue Division of the Taxation and Revenue Department of the State to the City as authorized by Sections 7-1-6.1 and 7-1-6.4 NMSA 1978, and which remittances as of the date of adoption of this Bond Ordinance are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the City for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Bond Ordinance; and provided further that the amount of revenues pledged pursuant to the Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance.

The bonds are equitably and ratably secured by a lien on the Pledged Revenues; and the bonds constitute an irrevocable and first lien (but not necessarily an exclusively first lien) upon the Pledged Revenues. Additional obligations may be issued and made payable from the Pledged Revenues and having a lien thereon inferior and junior to the lien, or, subject to designated conditions, having a lien thereon on a parity with the lien of the bonds of the series of which this bond is a part, in accordance with the provisions of the Bond Ordinance.

The City covenants and agrees with the registered owner of this bond and with each and every person who may become the registered owner hereof that it shall keep and perform all of the covenants of the Bond Ordinance.

This bond is subject to the conditions, and every registered owner hereof by accepting the same agrees with the obligor and every subsequent registered owner hereof that the principal of and the interest on this bond shall be paid, and this bond is transferable, free from, and without regard to any equities between the obligor and the original or any intermediate registered owner hereof for any set-offs or cross-claims.

It is further certified, recited and warranted that all the requirements of law have been fully complied with by the Commission and officers of the City in the issue of this bond; and that it is issued pursuant to and in strict conformity with the Constitution and laws of the State of New Mexico, and particularly the terms and provisions of Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and all laws thereunto enabling and supplemental thereto.

This bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the certificate of authentication herein.

IN WITNESS WHEREOF, the City of Truth or Consequences, New Mexico has caused this bond to be signed, subscribed, and executed, and attested with the manual or facsimile signatures of the Mayor and the City Clerk-Treasurer, respectively; has caused its corporate seal to be affixed hereon, all as of the Series Date.

CITY OF TRUTH OR
CONSEQUENCES, NEW MEXICO

By

Mayor



By

City Clerk-Treasurer

(Form of Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This is one of the bonds described in the within-mentioned Bond Ordinance, and this bond has been duly registered on the registration books kept by the undersigned as Registrar for such Bonds.

BOKF, NA, (OR SUCCESSOR IN
FUNCTION), as Registrar

By _____
Authorized Officer

(End of Form of Certificate of Authentication)

(Form of Assignment)

ASSIGNMENT

For value received, _____ hereby sells,
assigns and transfer unto _____ the _____ within
bond and hereby irrevocably constitutes and appoints _____ attorney, to
transfer the same on the books of the Registrar, with full power of substitution in the
premises.

Signature Guaranteed:

Name and Address of Transferee:

Social Security Number or
Other Tax Identification Number:

Dated:

(End of Form of Assignment)

(End of Form of Bond)

Section 14. Delivery of Bonds and Initial Registration. When the Bonds have been duly executed, authenticated, registered and sold, the City shall deliver them to the Purchaser on receipt of the agreed purchase price. The Registrar shall initially register the Bonds in the name of the Purchaser as identified in the Sale Certificate.

Section 15. Disposition of Proceeds; Completion of Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds shall be used and paid solely for the valid costs of the Project.

A. Accrued Interest. Upon the sale of the Bonds, all moneys received as accrued interest, if any, shall be deposited into the Bond Fund, to apply on the payment of interest next due on the Bonds.

B. Acquisition Fund. An amount necessary from the Bonds, together with other legally available funds of the City, shall be deposited for the payment of the costs of the Improvement Project.

C. Expenses. To the extent not paid by the Purchaser, an amount necessary, together with other legally available funds of the City, shall be used to pay Expenses for the Bonds, from Bond proceeds.

D. Additional Deposit. Upon the issuance and sale of the Bonds, the City Finance Director shall cause legally available moneys to be deposited in the Acquisition Fund in such amount as she determines shall be necessary to assure that the amount of the Acquisition Fund will be sufficient to pay the costs of the Improvement Project.

E. Refunding. An amount necessary from the Bonds, together with other legally available funds of the City, shall be transferred to the Owners of the Refunded Bonds to effectuate the Refunding Project.

F. Use of Acquisition Fund. The Acquisition Fund shall be used to pay the costs of the Improvement Project when due. As soon as practicable after completion of the Improvement Project, and in any event not more than 60 days after completion of the Improvement Project, any balance remaining in the Acquisition Fund (other than any amount retained by the City for any Improvement Project costs not then due and payable) shall be transferred from the Acquisition Fund and deposited in the Bond Fund and used by the City to pay principal and interest on the Bonds as same become due.

Section 16. Use of Proceeds. Except as otherwise specifically provided in this Bond Ordinance, the proceeds derived from the sale of the Bonds shall be used and paid solely for the purposes of the Project and including any costs relating to the issuance of the Bonds.

Section 17. Purchaser Not Responsible. The validity of the Bonds is neither dependent on nor affected by the validity or regularity of any proceedings related to the completion of the Project. Neither the Purchaser nor any subsequent Owner of any Bonds shall in any manner be responsible for the application or disposal by the City or by any officer or any employee or other agent of the City of the moneys derived from the sale of the Bonds or of any other moneys designated in this Bond Ordinance.

Section 18. Funds and Accounts. The City hereby creates or continues the following special and separate funds:

A. Acquisition Fund. The "City of Truth or Consequences, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023, Improvement Project Acquisition Fund" to be maintained by the City.

B. State-Shared Gross Receipts Tax Income Fund. The "City of Truth or Consequences, New Mexico State-Shared Gross Receipts Tax Income Fund" to be maintained by the City.

C. Bond Fund. The "City of Truth or Consequences, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023, Bond Fund" to be maintained by the City.

D. Reserve Fund. The "City of Truth or Consequences, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023, Reserve Fund" to be maintained by the City.

Section 19. Deposit of Pledged Revenues and Flow of Funds.

A. Income Fund. So long as any of the Bonds are outstanding either as to principal or interest, or both, the City shall credit all Pledged Revenues to the State-Shared Gross Receipts Tax Income Fund. The following payments shall be made from the Income Fund.

B. Bond Fund.

(i) As a first charge on the State-Shared Gross Receipts Tax Income Fund, the following amounts shall be withdrawn from the State-Shared Gross Receipts Tax Income Fund and shall be credited to the Bond Fund:

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth ($1/6^{\text{th}}$) of the amount necessary to pay the next maturing installment of interest on the Bonds then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Bonds and monthly thereafter, commencing on each principal payment date, one twelfth ($1/12^{\text{th}}$) of the amount necessary to pay the next maturing installment of principal on the Bonds then outstanding.

C. Credit. In making the deposits required to be made into the Bond Fund, if there are any amounts then on deposit in the Bond Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (B) above shall be reduced by the amount available in such fund for such purpose.

D. Transfer of Money out of Bond Fund. Each payment of principal and interest becoming due on the Bonds shall be transferred from the Bond Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

E. Reserve Fund. Unless provided for differently in the Sale Certificate, immediately upon the sale and delivery of the Bonds, a deposit in an amount equal to the Reserve Requirement will be made into the Reserve Fund from proceeds of the Bonds or, alternatively, the County may acquire a Reserve Fund Insurance Policy in an amount equal to

all or part of the Reserve Requirement so that the combined amount of cash in the Reserve Fund and the amount of the Reserve Fund Insurance Policy is equal to the Reserve Requirement. Amounts on deposit in the Revenue Fund, after making the deposits into the Bond Fund and the debt service funds for Parity Bonds required by Paragraphs B and G of this Section, may also be used by the County pursuant to this Paragraph E to make deposits into the Reserve Fund if required to meet the Reserve Requirement or to pay the annual premiums or other costs required by or associated with any Reserve Fund Insurance Policy. No payment need be made into the Reserve Fund so long as the moneys or the Reserve Fund Insurance Policy therein shall equal not less than the Reserve Requirement. The moneys in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in this Section, only to prevent deficiencies in the payment of the principal of and interest on the Bonds resulting from failure to deposit into the Bond Fund sufficient funds to pay the principal and interest as the same become due.

F. Defraying Delinquencies in the Bond Fund and Reserve Fund. If, in any month, the City shall, for any reason, fail to pay into the Bond Fund the full amount above stipulated for the Bonds from the Pledged Revenues, then an amount shall be paid into the Bond Fund in such month from the Reserve Fund equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. If the moneys paid into the Bond Fund from the Reserve Fund are not equal to the amount required to be paid into the Bond Fund for such month, then in the following month, an amount equal to the difference between the amount paid and the amount required shall be deposited into the Bond Fund, in addition to the normal payment required to be paid in such month, from the first Pledged Revenues thereafter received and not required to be otherwise applied. The money deposited in the Bond Fund from the Reserve Fund, if any, shall be replaced in the Reserve Fund from the first Pledged Revenues thereafter received not required to be otherwise applied. If, in any month, the City shall, for any reason, fail to pay into the Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the Bonds. Cash accumulated in the Reserve Fund shall not be invested in a manner which could cause the Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the Reserve Fund exceeds the Minimum Reserve, all amounts in excess of such Minimum Reserve shall be transferred to the Bond Fund and used to pay principal of and interest on the Bonds.

G. Payment of Parity Obligations. Concurrently with the payment of the Pledged Revenues required by paragraphs (B), (E) and (F) of this Section, any amounts on deposit in the State-Shared Gross Receipts Tax Income Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to Parity Obligations, payable from the State-Shared Gross Receipts Tax Revenues, as the same accrue. If funds on deposit in the State-Shared Gross Receipts Tax Income Fund are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the Bonds and any other outstanding Parity Obligations, then the available and applicable funds in the State-Shared Gross Receipts Tax

Income Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Obligations, for the payment of principal of and interest on all series of outstanding Parity Obligations and, second, to the extent of remaining available funds in the State-Shared Gross Receipts Tax Income Fund, on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Obligations.

H. Termination Upon Deposits to Maturity. No payment shall be made into the Bond Fund or the Reserve Fund if the amounts (excluding any amount in the Reserve Fund represented by a Reserve Fund Insurance Policy) in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Bonds to their respective maturities or applicable redemption dates, in which case moneys in the Bond Fund and the Reserve Fund in an amount at least equal to such respective principal and interest requirements shall be used solely to pay such obligations as the same accrue, and any moneys in excess thereof in the Bond Fund and the Reserve Fund may be used as provided below.

I. Payment for Subordinate State-Shared Gross Receipts Tax Obligations. Subsequent to the payments required by paragraphs (B), (E), (F) and (G) of this Section, any balance remaining in the State-Shared Gross Receipts Tax Income Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of additional obligations, if any, hereafter authorized to be issued and payable from the State-Shared Gross Receipts Tax Revenues with a lien on the State-Shared Gross Receipts Tax Revenues junior or subordinate to the lien thereon of the Bonds (provided that such payments may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional obligations).

J. Payment from Other Sources. Notwithstanding any other provisions of this Bond Ordinance, the City may, in its sole discretion, choose to apply other legally available funds to the payment of the Bonds.

K. Surplus Revenues. After making all the payments hereinabove required to be made by this Section, and paying the Bond Insurer all amounts due or to become due to the Bond Insurer, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 20. General Administration of Funds. The funds designated in Section 18 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding

Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys, if any, in the Reserve Fund shall be invested in accordance with paragraph (C) of this Section 20 and moneys in any other fund or account not immediately needed may be invested in any Permitted Investment allowed by the laws of the State. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Finance Director shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the Reserve Fund may be invested only in Permitted Investments with a maturity not greater than five years (except for investment agreements approved in writing by the Bond Insurer). The City shall annually, on or about June 1 of each year, commencing on the first June 1 succeeding funding of the Reserve Fund, value the Reserve Fund on the basis of the current fair market value of deposits and investments credited to the Reserve Fund. For purposes of determining the amount on deposit in the Reserve Fund, any Reserve Fund Insurance Policy held by, or the benefit of which is available to, the City as security for the Bonds shall be deemed to be a deposit in the face amount of the policy or the stated amount of the credit facility provided, except that, if the amount available under a Reserve Fund Insurance Policy has been reduced as a result of a payment having been made thereunder or as a result of the termination, cancellation or failure to such Reserve Fund Insurance Policy and not reinstated or another Reserve Fund Insurance Policy provided, then, in valuing the Reserve Fund, the value of such Reserve Fund Insurance Policy shall be reduced accordingly. If, upon any valuation, the value of the Reserve Fund exceeds the Minimum Reserve, the excess amount shall be withdrawn and deposited into the Bond Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the Reserve Fund may be used to pay the final installments of principal and interest on the Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the Reserve Fund or a payment has been made under a Reserve Fund Insurance Policy constituting all or a portion of the Reserve Fund, and deposited into the Bond Fund to prevent a default on the Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn, together with interest, if any, required under the terms of the Reserve Fund Insurance Policy, or so much as shall be required to restore the Reserve Fund to the Minimum Reserve and to pay such interest, if any. Such repayment shall be made as required by paragraph (F) of Section 19.

The City may in part, or in whole, replace amounts in the Reserve Fund with a Reserve Fund Insurance Policy if the City receives written consent of the Bond Insurer prior to such replacement.

Section 21. First Lien on Pledged Revenues. The Bonds constitute an irrevocable and first lien on the Pledged Revenues.

Section 22. Additional Bonds and Other Obligations Payable from Pledged Revenues.

A. Limitations Upon Issuance of Parity Obligations. Nothing in this Bond Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon the Pledged Revenues on a parity with, but not prior or superior to, the lien of the Bonds, nor to prevent the issuance of bonds or other obligations refunding all or a part of the Bonds herein authorized, provided, however, that before any such additional Parity Obligations are issued including those parity lien refunding bonds and other parity lien refunding obligations which refund subordinate lien bonds and other subordinate lien obligations, but not including parity lien refunding bonds and other parity lien refunding obligations which refund outstanding Parity Obligations as permitted by Sections 23(B)(i) and 23(D)(i):

(i) the City is then current in all of the accumulations required to be made in the Bond Fund and Reserve Fund pursuant to Section 19; and

(ii) the Pledged Revenues received by the City for the Fiscal Year immediately preceding the date of issuance of such additional Parity Obligations shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on the then Outstanding Bonds, all other than outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding any reserves therefor); provided that if such additional Parity Obligations are issued as variable rate obligations, the highest interest rate allowed by the instruments authorizing such additional Parity Obligations shall be used in making such calculation.

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by the City Finance Director that the Pledged Revenues are sufficient to pay the required amounts under the test in paragraph (A) of this Section, shall conclusively

determine the right of the City to issue additional Parity Obligations. The City Finance Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Subordinate Obligations Permitted. Nothing contained in this Bond Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon the Pledged Revenues subordinate, inferior and junior to the lien on the Bonds.

D. Superior Obligations Prohibited. Nothing contained herein shall be construed so as to permit the City to issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to the Bonds.

Section 23. State-Shared Gross Receipts Tax Refunding Bonds. The provisions of Section 22 are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time after the Bonds, or any part thereof, shall have been issued and remain outstanding, the City shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, such bonds or other obligations, or any part thereof, may be refunded (but only with the consent of the registered owner or owners thereof, unless the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the City's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed (except as provided in Sections 22(C) or 22(D)).

B. Limitations Upon Issuance of Parity Refunding Obligations. No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with the Bonds, unless:

(i) The lien on the Pledged Revenues of the outstanding obligations so refunded is on a parity with the lien thereon of the Bonds; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 22(A).

C. Refunding Part of an Issue. The refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any there be; and the registered owner or owners of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the registered owner or owners of the bonds or other obligations of the same issue refunded thereby.

D. Limitations Upon Issuance of any Refunding Obligations. Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the City may by ordinance provide, but without any impairment of any contractual obligations imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues

(including, without limitation, the Bonds). If only a part of the outstanding Bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the registered owner or owners of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest requirements evidenced by such refunding obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 22(A); or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

Section 24. Equality of Bonds. No Bond shall be entitled to any priority over another in the application of the Pledged Revenues, regardless of the time or times of their issuance, it being the intention of the Commission that there shall be no priority among the Bonds regardless of the fact that they may be actually issued and delivered at different times.

Section 25. Protective Covenants. The City covenants and agrees with each and every registered owner of the Bonds that, so long as any of the Bonds remains Outstanding:

A. Use of Bond Proceeds. The City, with the proceeds derived from the sale of the Bonds, shall proceed without delay to carry out the Project as herein provided.

B. Payment of Bonds. The City shall promptly pay the principal of and the interest of every Bond at the place, on the dates and in the manner specified herein and in the Bonds according to the true intent and meaning hereof. Such principal and interest are payable solely from the Pledged Revenues; provided that nothing herein shall prevent the City, in its discretion, from paying such principal and interest from any other legally available funds.

C. Records. The City shall keep books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

D. Audits. The City shall, within 180 days following the close of each Fiscal Year, cause an audit of such books and accounts related to the Pledged Revenues to be made by an Independent Accountant unless the audit cannot be conducted within 180 days following the close of each Fiscal Year because the State Auditor or other authority of the State with superintending control of the audit directs that the audit be made by a designated auditor under different time deadlines or by the State Auditor's office and staff, in which case, the City will use its best efforts to have the audit completed as soon as possible following the close of the Fiscal Year.

E. Extending Interest Payments. In order to prevent any accumulation of claims for interest after maturity the City shall not directly or indirectly, extend or assent to the extension of the time for payment of any claim for interest on any of the Bonds, and it shall not directly or indirectly be a party to or approve any arrangement for such extension or for the purpose of keeping alive any of said interest and in case the time for payment of any such interest shall be extended, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or security of this Bond Ordinance except subject to the prior payment in full of the principal of all Bonds then outstanding, and of matured interest on such Bonds the payment of which not been extended.

F. Performing Duties. The City shall faithfully and punctually perform all duties with respect to the Bonds required by Constitution and laws of the State of New Mexico, and ordinances and resolutions of the City, including but not limited to the proper segregation of the Pledged Revenues and their application to the respective funds and accounts.

G. Other Liens. Other than as described in this Bond Ordinance, there are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

H. Duty with Respect to Pledged Revenues. If the statutes or any ordinance which materially affects the Pledged Revenues or any part of such ordinances shall ever be held to be invalid or unenforceable, the City shall immediately take any action necessary to produce sufficient Pledged Revenues to comply with the contracted obligations of this Bond Ordinance, except as is provided in Section 25(I).

I. Impairment of Contract. Any law or ordinance or resolution of the City in any manner affecting the Pledged Revenues or the Bonds, or otherwise appertaining thereto, shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Outstanding Bonds, unless the consent of the required percentage of the Owners of the then Outstanding Bonds is obtained pursuant to Section 34.

J. City's Existence. The City shall maintain its corporate identity and existence unless another political subdivision by operation of law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the City, and is obligated by law to receive and distribute the Pledged Revenues in place of the City, without affecting to any substantial degree the privileges and rights of any Owner.

Section 26. Defeasance. When all principal, any applicable prior redemption premium, and interest in connection with the Bonds have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be Outstanding within the meaning of this Bond Ordinance. There shall be deemed to be such due payment as to any Bond when the Commission has placed in escrow and in trust with a commercial bank located within or without the State and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may initially be invested) to meet all requirements of principal, interest and any applicable prior redemption premium as the same become due to its maturity or

designated redemption date as of which the City shall have exercised or obligated itself to exercise its option to call such Bond. The Federal Securities shall become due prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the Commission and such bank at the time of the creation of the escrow or the Federal Securities shall be subject to the redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule. Federal Securities within the meaning of this Section 26 shall include only direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America and which are not callable prior to maturity by the issuer of such obligations.

Section 27. Delegated Powers. The officers of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of the Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the summary of publication set out in Section 37 of the Bond Ordinance (with such changes, additions and deletions as they may determine), the distribution of material relating to the Bonds, the printing of the Bonds, the printing, execution and distribution of a Preliminary and final Official Statement, and the execution and delivery of the Bond Purchase Agreement, the Continuing Disclosure Undertaking and of such certificates as may be required by the Purchaser, the Bond Purchase Agreement, or bond counsel. The use and distribution of the Preliminary Official Statement and the Official Statement in connection with the sale of the Bonds to the public is hereby ratified, authorized, approved and acknowledged.

The City Manager, or her successor in interest, is hereby authorized and directed to make such changes or corrections to the procedures established in the Bond Ordinance relating to the times of day or the days on which actions are required to be taken, or the persons responsible for particular actions, the form of notice of the occurrence of events, the types and forms of actions required and other similar administrative matters which, in her judgment, are necessary and appropriate to accomplish the purposes of the Bond Ordinance. The Manager, or her successor in interest or title, shall give notice of any such changes or corrections to all persons affected thereby, to Bond Counsel for the City and shall file with the City Clerk-Treasurer a certificate of such changes and corrections.

Pursuant to the Supplemental Public Securities Act, Section 6-14-8 et seq., NMSA 1978, the Mayor and Manager are each hereby delegated authority to execute the Bond Purchase Agreement, the Sale Certificate and to determine any or all of the final terms of the Bonds, subject to the parameters and conditions contained in this Bond Ordinance. The Mayor or Manager shall present the Sale Certificate to the Commission in a timely manner, before or after delivery of the Bonds, at a regularly scheduled public meeting of the Commission.

Section 28. Events of Default. Each of the following events is an "Event of Default":

A. Nonpayment of Principal. Any payment of the principal of any of the Bonds is not made when due and payable, either at maturity, by proceedings for prior redemption, or otherwise.

B. Nonpayment of Interest. Any payment of any installment of interest on the Bonds is not made when the same becomes due and payable or within 30 days thereafter.

C. Default of any Provision. Any failure by the City to observe or perform any covenant, condition or agreement on its part to be observed or performed (other than as referred to in Section 28(A) or Section 28(B)), which failure continues for a period of 60 days after written notice specifying the failure and requesting that it be remedied has been given to the City by the Owners of 25% in principal amount of the Bonds then Outstanding.

D. Bankruptcy or Insolvency of City. (1) The City shall (a) apply for or consent to the appointment of or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the City or of all or a substantial part of its property, (b) commence a voluntary case under the Federal Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, or reorganization or (2) a proceeding or case shall be commenced, without application or consent of the City, in any court of competent jurisdiction seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the City, (b) appointment of a trustee, receiver, custodian, liquidator or the like of the City or of all or a substantial part of its assets, or (c) similar relief in respect of the City under any law relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts.

Section 29. Remedies Upon Default. Upon the occurrence and during the continuance of any Event of Default, the Owners of not less than 25% in principal amount of the Bonds then Outstanding, including but not limited to a trustee or trustees therefor, may proceed against the City, the Commission, and its agents, officers and employees to protect and enforce the rights of any Owner under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for specific performance of any covenant or agreement contained herein or in an award or execution of any power herein granted for the enforcement of any power, legal or equitable remedy as such Owners may deem most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any registered owner, or to require the Commission to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Bonds then Outstanding. The failure of any Owner to so proceed shall not relieve the City or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege or any Owner (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof.

Section 30. Duties Upon Default. Upon the occurrence and during the continuance of any Event of Default, the City shall do and perform all proper acts on behalf of and for the Owners to protect and preserve the security created for the payment of the principal of and

interest on the Bonds promptly as the same become due. In the event the City fails or refuses to proceed as provided in this Section 30, the registered Owners of not less than 25% in principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of the Owners as hereinabove provided.

Section 31. Federal Tax Matters.

A. Qualified Tax-Exempt Obligations. The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The City has no "subordinate entities" with authority to issue tax-exempt obligations within the meaning of that Section of the Code. In that connection, the Commission hereby covenants that the Commission in or during the calendar year in which the Bonds are issued, (i) will not designate as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code tax-exempt obligations, including the Bonds, in an aggregate principal amount in excess of ten million dollars and (ii) will not issue tax-exempt obligations within the meaning of Section 265(b)(4) of the Code, including the Bonds and any qualified 501(c)(3) bonds as defined in Section 145 of the Code (but excluding obligations, other than qualified 501(c)(3) bonds, that are private activity bonds as defined in Section 141 of the Code), in an aggregate principal amount exceeding ten million dollars.

B. Tax Compliance. The City (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excludable from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government from the Rebate Fund, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Manager, Finance Director and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

C. Rebate Fund. In furtherance of the covenants set forth in the preceding paragraph, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested pursuant to the procedure that in a manner provided in Section 20 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all

rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted first to the Bond Insurer to the extent of any amounts owed to the Bond Insurer and then to the City.

Section 32. Severability. If any section, paragraph, clause or provision shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 33. Repealer Clause. All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution or part of any ordinance or resolution heretofore repealed.

Section 34. Amendment. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained herein, to add to the covenants and agreements in this Bond Ordinance for the protection or benefit of the Owners, to subject to this Bond Ordinance additional revenues, properties or collateral, to comply with the provisions of the Code, or to comply with any rule or regulation of the Securities and Exchange Commission relating to the Bonds. Except as provided above, this Bond Ordinance may be amended or supplemented by ordinance adopted by the Commission in accordance with the laws of the State, without receipt by the City of any additional consideration but with the written consent of the Owners of 75% of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that no such ordinance (without the consent of the registered owners of all of the Bonds authorized by this Bond Ordinance and outstanding at the time of adoption of such amendatory or supplemental ordinance) shall have the effect of permitting:

- A. An extension of the maturity of any Bond; or
- B. A reduction in the principal amount of any Bond, the rate of interest thereon or the prior redemption premium due in connection therewith; or
- C. The creation of a lien upon or pledge of Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or
- D. A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental ordinance; or
- E. The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or
- F. The modification of or otherwise affecting the rights of the registered owners of less than all of the Bonds then outstanding.

Notwithstanding the foregoing, prior to the issuance of the Bonds, this Bond Ordinance may be amended by resolution of the City Commission to cure, correct or supplement any defect or inconsistent provision contained herein.

Section 35. Payment Due on Other Than Business Days. In any case where the date of payment of principal, premium, if any, or interest on the Bonds or the date fixed for redemption of any Bonds, or the date for performing any act or exercising any right, shall be a day other than a business day, then payment of interest or principal and premium, if any, or the performance of such act or exercise of such right need not be made on such date but may be made on the next succeeding business day with the same force and effect as if it had been made on the date scheduled for such payment, performance, or exercise.

Section 36. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, cancelled and discharged as therein provided, or have been deemed paid as provided in Section 26.

Section 37. Publication of Bond Ordinance. The following notice shall be published one time in the *Sierra County Sentinel*, being a legal newspaper published and of general circulation in the City, as soon as is practicable following the adoption hereof:

(Form of Notice of Adoption)

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
NOTICE OF ADOPTION OF ORDINANCE NO. 756

Notice is given of the adoption by the City Commission of the City of Truth or Consequences, New Mexico of its Ordinance No. 756 on November 15, 2023, relating to City of Truth or Consequences, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023. The title of the Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF THE CIT OF TRUTH OR CONSEQUENCES, NEW MEXICO GROSS RECEIPTS TAX IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2023 IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,500,000 FOR THE PURPOSE TO (1) ACQUIRE, CONSTRUCT, FURNISH, EQUIP, BEAUTIFY AND IMPROVE A PUBLIC SAFETY BUILDING FOR THE BENEFIT OF THE CITY AND ITS RESIDENTS, (2) TO REFINANCE, PAY AND DISCHARGE CERTAIN OF THE CITY'S OUTSTANDING LOAN AGREEMENTS WITH THE NEW MEXICO FINANCE AUTHORITY, AND (3) PAY COSTS OF ISSUANCE OF THE SERIES 2023 BONDS; PROVIDING THAT THE SERIES 2023 BONDS WILL BE PAYABLE AND COLLECTIBLE FROM AND SECURED BY A PLEDGE OF THE GROSS RECEIPTS TAX DISTRIBUTED TO THE CITY PURSUANT TO SECTION 7-1-6.4 NMSA 1978, AS AMENDED; PROVIDING FOR THE DISPOSITION OF THE RECEIPTS DERIVED FROM SAID TAX

PROCEEDS; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE SALE OF THE SERIES 2023 BONDS PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE SERIES 2023 BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE SERIES 2023 BONDS; RATIFYING ACTION PREVIOUSLY TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUE AND SALE OF THE SERIES 2023 BONDS.

The title sets forth a general summary of the subject matter contained in the ordinance.

Complete copies of the ordinance are on file in the Office of the City Clerk-Treasurer and are available for inspection and/or purchase during regular office hours. This Notice constitutes compliance with Sections 6-14-4 through 6-14-7 NMSA 1978.

(End of Form of Notice of Adoption)

Section 38. Interested Parties. Nothing in this Bond Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Registrar, the Paying Agent, the Purchaser, the Bond Insurer and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Bond Ordinance or any covenant, condition or stipulation hereof.

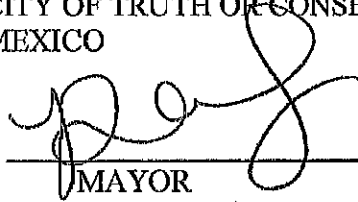
Section 39. Limitation on City's Liability. NOTWITHSTANDING ANY PROVISION OF THIS BOND ORDINANCE TO THE CONTRARY, THE OBLIGATIONS OF THE CITY UNDER THIS BOND ORDINANCE ARE SPECIAL, LIMITED OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS. NEITHER THE FAITH AND CREDIT, NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE CITY, IS PLEDGED TO THE PAYMENT OR PERFORMANCE OF SUCH OBLIGATIONS. NO AGREEMENTS OR PROVISIONS CONTAINED IN THIS BOND ORDINANCE OR ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL GIVE RISE TO ANY PECUNIARY LIABILITY OF THE CITY, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY OR CONSTITUTE A CHARGE AGAINST THE CITY'S GENERAL CREDIT, OR OBLIGATE THE CITY FINANCIALLY IN ANY WAY, EXCEPT WITH RESPECT TO THE PLEDGED REVENUES, AND THEIR APPLICATION AS PROVIDED IN THIS BOND ORDINANCE. NO FAILURE OF THE CITY TO COMPLY WITH ANY TERMS, COVENANTS OR AGREEMENTS IN THIS BOND ORDINANCE OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL SUBJECT THE CITY, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY TO ANY PECUNIARY CHARGE OR LIABILITY EXCEPT TO THE EXTENT THAT THE SAME CAN BE PAID OR RECOVERED FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS.

Section 40. Governing Law. All rights and obligations of the parties with respect to the Bonds and this Bond Ordinance shall be construed, enforced, and interpreted according to the laws of the State. Venue with regard to any action relating to the Bonds or this Bond Ordinance shall be in federal or state district court located in the State.

[Signature Page Follows]

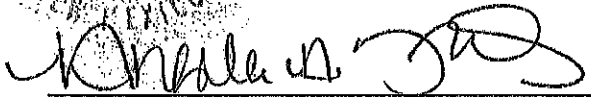
PASSED, APPROVED, AND ADOPTED THIS 15TH DAY OF NOVEMBER, 2023.

CITY OF TRUTH OR CONSEQUENCES, NEW
MEXICO



MAYOR





CLERK-TREASURER

Commissioner Fahl then moved that the ordinance as filed with the City Clerk-Treasurer at this meeting be passed and adopted. Commissioner Mitchell seconded the motion.

The question being upon the passage and adoption of the ordinance, the motion was voted upon with the following result:

Those Voting Yea: Amanda Forrister, Mayor

Rolf Hechler, Mayor Pro-Tem

Merry Jo Fahl, Commissioner

Destiny Mitchell, Commissioner

Shelly Harrelson, Commissioner

Those Voting Nay:

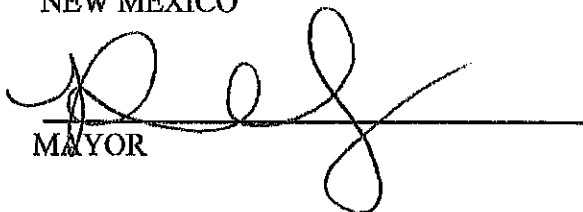
Those Absent:

The Mayor thereupon declared that at least three-fourths of all the members of that Commission having voted in favor thereof, the motion was carried and the ordinance duly passed and adopted.

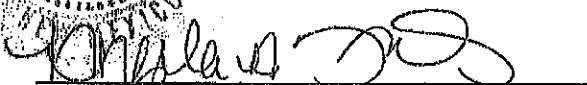
After consideration of the matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

Dated this 15th day of November, 2023.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO


MAYOR




CLERK-TREASURER



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.15

SUBJECT: Consideration to repeal Special Election Resolution No. 29 23/24

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: January 18, 2024

SUBMITTED BY: Angela A. Torres, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: City Attorney Rubin

Summary/Background:

Consideration to repeal Special Referendum Election Resolution.

Recommendation:

None.

Attachments:

- Resolution No 29 23/24

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-24-24

**SPECIAL ELECTION PROCLAMATION/RESOLUTION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO**

RESOLUTION NO. 29 23/24

**A PROCLAMATION RESOLUTION CALLING A SPECIAL ELECTION ON
TUESDAY, MARCH 19, 2024**

Whereas, a referendum petition has been submitted to the Governing Body of the City of Truth or Consequences, New Mexico, seeking a special election on the subject matter of this Resolution pursuant to Section 3-14-17 NMSA 1978; and

Whereas, the Governing Body of the City of Truth or Consequences, New Mexico wishes to call a special election at the earliest opportunity consistent with present law; and

Whereas, the earliest date upon which a special election may be called pursuant to Section 1-24-1 NMSA 1978 is March 19, 2024.

Now Therefore Be It Resolved by the Governing Body of the City of Truth or Consequences that:

The City Commission of the City of Truth or Consequences, New Mexico hereby PROCLAIMS:

- A. A Special Election will be held by mail through the Office of the County Clerk, 1712 N. Date Suite A, Truth or Consequences, New Mexico, on Tuesday, March 19, 2024. It shall be conducted by mail ballot (ONLY) to all City of Truth or Consequences qualified registered electors.
- B. Voters shall be asked whether the following measure shall be adopted:

ORDINANCE NO. 756: Authorizing the issuance and sale of the City of Truth or Consequences New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2023 in one or more series in an aggregate principal amount not to exceed \$4,500,000 for the purpose to (1) Acquire, Construct, Furnish, Equip, Beautify and improve a public safety building for the benefit of the city and its residents, (2) to refinance, pay and discharge certain of the City's Outstanding loan agreement with the New Mexico Finance Authority, and (3) pay costs of issuance of the Series 2023 Bonds; Providing that the series 2023 Bonds will be payable and collectible from and secured by a pledge of the gross receipts tax distributed to the city pursuant to Section 7-1-6.4 NMSA 1978, as amended; providing for the disposition of the receipts derived from said tax proceeds; approving the delegation of authority to make certain determinations regarding the sale of the Series 2023 Bonds pursuant to the supplemental Public Securities Act; providing for the terms and other details concerning the Series 2023 Bonds; providing for certain documents pertaining to the series 2023 Bonds; Ratifying action previously taken; repealing all actions inconsistent with this ordinance; authorizing the taking of other actions in connection with the issue and sale of the Series 2023 Bonds.

FOR THE ABOVE MEASURE
AGAINST THE ABOVE MEASURE

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES;

That the City Clerk and the Office of the County Clerk are hereby authorized to do all deeds necessary in the accomplishment of the herein above.

PASSED, APPROVED and ADOPTED this 3rd day of January, 2024.



Angela A. Torres, City Clerk


Rolf Hechler, Mayor



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: January 24, 2024

Agenda Item #: H.16

SUBJECT: Update on city website redesign
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: January 18, 2024
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

Update on recent city website redesign.

Recommendation:

None. Presentation Only.

Attachments:

- None.

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-24-24