

*Rolf Hechler
Mayor*

*Amanda Forrister
Mayor Pro-Tem*

*Merry Jo Fahl
Commissioner*



*Destiny Mitchell
Commissioner*

*Ingo Hoepfner
Commissioner*

*Angie Gonzales
City Manager*

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

REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, OCTOBER 23, 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 Hoepfner, 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 Commission
3. City Attorney

E. PUBLIC HEARINGS (5 Minute Rule Applies)

1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 769
Authorizing the Issuance of The City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B, In the Principal Amount of One Million Sixty-Five Thousand Nine Hundred Eighty-three Dollars and Thirty-Six cents (\$1,065,983.36) For the Purpose of Predevelopment Financing. Chris Muirhead, Modrall Sperling

F. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 18 24/25 Budget Adjustment Request. Assistant City Manager Alvarez
2. Discussion/Action: Resolution No. 19 24/25 2023 Budget Adjustments. Assistant City Manager Alvarez
3. Discussion/Action: Resolution No. 20 24/25 for the Sale of Surplus Property to be sold at the November 16, 2024, Willard Hall Auction. City Clerk Torres

G. NEW BUSINESS

1. Discussion/Action: Film Report and Film Liaison Appointment. Cary “Jagger” Gustin
2. Discussion/Action: Approval of the Louis Armijo Sports Complex Master Plan. OJ Hechler, Community Services Director
3. Discussion/Action: Summary Plat Amendment at 601 E. Third/217 N. Maple. Assistant City Manager Alvarez
4. Discussion/Action: Vacation of Plats to Vacate a 20’ alley situated in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace as per Sec. 15-18 (Vacation of Plats). Assistant City Manager Alvarez
5. Discussion/Action: Agreement Between Owner (City of T or C) and Engineer (Wilson & Co) for Professional Services for the Water System Performance Improvements Phase 2 (WSPI 2). Assistant City Manager Alvarez
6. Discussion/Action: Proposed Service Agreement between the Truth or Consequences Municipal School District and the Truth or Consequences Police Department. Assistant City Manager Alvarez
7. Discussion/Action: Approval of Purchase Requisitions over \$20,000. Assistant City Manager Alvarez
8. Discussion/Action: Re-appointment of Planning & Zoning Commission Member Chris Sisney. City Clerk Torres
9. Discussion/Action: Re-appointment of Planning & Zoning Commission Member Esther Luchini. City Clerk Torres
10. Discussion/Action: Re-appointment of Planning & Zoning Commission Member Susan Buhler. City Clerk Torres
11. Discussion/Action: Approval of the 2025 City Holiday Schedule. City Clerk Torres

H. EXECUTIVE SESSION

1. Limited Personnel Matters (City Manager) Pursuant to 10-15-1(H.2).

I. RETURN TO REGULAR SESSION; ACTION (if any)

1. Limited Personnel Matters (City Manager) Pursuant to 10-15-1(H.2).

J. ADJOURNMENT

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.

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

NEXT REGULAR CITY COMMISSION MEETING NOVEMBER 13, 2024



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: E.1

SUBJECT: Public Hearing and Final Adoption of Ordinance No. 769 Authorizing the Issuance of The City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B, In the Principal Amount of One Million Sixty-Five Thousand Nine Hundred Eighty-three Dollars and Thirty-Six cents (\$1,065,983.36) For the Purpose of Predevelopment Financing

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: October 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Chris Muirhead

Summary/Background: First reading of Bond Ordinance and approval to publish Notice of Meeting was done on 9/24-24. Now it is being brought back for a public hearing and final adoption of an Ordinance related to \$1,065,983.36 loan with Bank of the Southwest for the pre-development financing of the Water System Improvement as approved by USDA Letter of Conditions, dated 7-30-2024. The financing will pay for costs incurred for all pre-development activities including preparation of PER/ER, design, final plans and specifications, obtained required easements and prepare bid documents.

Recommendation: The City Staff recommends approval of the bond ordinance.

Attachments:

- Bond Ordinance No. 769
- USDA Project Letter of Conditions
- Project Description and Map

Fiscal Impact (Finance): Yes

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 10-23-24

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NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City of Truth or Consequences City Commission will hold a Public Hearing during their regular scheduled meeting on Wednesday, October 23, 2024, to receive additional input regarding the following:

Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 769 Authorizing the Issuance of The City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B, In the Principal Amount of One Million Sixty-Five Thousand Nine Hundred Eighty-three Dollars and Thirty-Six cents (\$1,065,983.36) For the Purpose of Predevelopment Financing.

The meeting will be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico starting at 9:00 a.m.

Please contact me at (575) 894-6675 or by email at aaatorres@torcnm.org should you have any questions regarding this Public Hearing.

The agenda may be obtained on Friday, October 18, 2024, on the city website calendar at www.torcnm.org; by contacting the City Clerk's Office at 575-894-6673; or by email to: torcclerk@torcnm.org.

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

Publish on the following date:

- Sentinel– Thursday, September 26, 2024

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 23rd day of October 2024, 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:

Present:

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. 769

AUTHORIZING THE ISSUANCE OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO WATER SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2024B, IN THE PRINCIPAL AMOUNT OF ONE MILLION SIXTY-FIVE THOUSAND NINE HUNDRED EIGHTY-FOUR DOLLARS (\$1,065,984) FOR THE PURPOSE OF CONSTRUCTION FINANCING FOR ACQUIRING, EXTENSION, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE CITY'S WATER SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

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

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

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

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

WHEREAS, the City is authorized under the Act to issue revenue bonds for the Project and the Series 2024B Bonds shall be issued pursuant to the Act; and

WHEREAS, the issuance of the Series 2024B Bonds will provide for the preservation of the public health, peace and safety; and

WHEREAS, it is in the best interest of the City that the Series 2024B Bonds be issued with a first lien on the Net Revenues; and

WHEREAS, the Bank of the Southwest has offered to purchase the Series 2024B Bonds, in the principal amount of \$1,065,984 at par and at an interest rate of 5.00% per annum pursuant to this Ordinance, plus accrued interest, if any, to the date of delivery; and

WHEREAS, all required authorizations, consents or approvals of any state, governmental body, agency or authority, in connection with the authorization, execution and delivery of the

Series 2024B Bonds which are required to have been obtained by the date hereof have been obtained, and which will be required to be obtained prior to the date of the issuance of the Series 2024B Bonds, will have been obtained by such date.

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

Section 1. Definitions. In addition to words and terms elsewhere defined in this Ordinance, the following words and terms shall have the following meanings:

“Act” means the powers of the City under the authority given by the provisions of Sections 3-31-1 through 3-31-12 NMSA 1978, as amended and supplemented, and all enactments of the Commission relating to the issuance of the Series 2024B Bonds.

“Bond Fund” means the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B, Interest and Bond Retirement Fund” created by Section 16 hereof.

“Bondholder”, “holder” or “owner” means any registered owner of the Series 2024B Bonds.

“City” means the municipal corporation, a body corporate and politic known as the “City of Truth or Consequences, New Mexico.”

“Commission” means the City Commission, or any succeeding legislative body of the City, as such governing body from time to time may be constituted and authorized to act and approve actions by a properly constituted quorum.

“Consulting Engineer” means any registered or licensed professional engineer or firm of such engineers having a wide and favorable reputé for skill and experience in the field of designing, preparing plans and specifications for, and supervising construction of water systems and facilities entitled to practice and practicing as such under the laws of the State of New Mexico.

“Debt Service Schedule” means the payment schedule for the Series 2024B Bonds as provided by the Purchaser, as the same may be revised in the event of partial prepayment of the Series 2024B Bonds.

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

“Herein” or “hereby” or “hereunder” or “hereof” or “hereinbefore” or “hereinafter” refers to this Ordinance and not solely to the particular portion thereof in which such word is used.

“Income Fund” means the “Water Utility System Gross Income Fund” continued by Section 16 hereof.

“Independent Accountant” means an accountant employed by the State of New Mexico and under supervision of the State Auditor or any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (a) is, in fact, independent and not under the domination of the City, (b) does not have any substantial interest, direct or indirect, with the City, and (c) 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.

“Insured Bank” means a bank or savings and loan association insured by an agency of the United States and which invests public funds in accordance with the provisions of Section 6-10-10 NMSA 1978, as amended.

“Mayor” means the Mayor of the City, or if the form of government of the City is changed, the presiding officer of the City no matter how such officer may be designated.

“Net Revenues” means the Gross Revenues of the System less Operation and Maintenance expenses, which net revenues are pledged to the payment of the Series 2024B Bonds are provided herein.

“NMSA 1978” means the compilation of the laws of the State of New Mexico known as New Mexico Statutes Annotated, 1978 Compilation, as from time to time amended and supplemented.

“Operation and Maintenance Fund” means the “Operation and Maintenance Fund” continued herein.

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

“Ordinance” means this ordinance.

“Outstanding” or “outstanding” means, on any particular date, the aggregate of such bonds issued and delivered under the City ordinance authorizing the issuance of such bonds except:

A. Those cancelled at or prior to such date or delivered to or acquired by the City at or prior to such date for cancellation;

B. Those which have been paid or are deemed to be paid in accordance with the City ordinance authorizing the issuance of the applicable bonds or otherwise relating thereto; and

C. Those in lieu of or in exchange or substitution for which other bonds have been delivered, unless proof satisfactory to the City and paying agent for the applicable bonds is presented that any bond for which a new bond was issued or exchanged is held by a bona fide holder in due course.

“Parity Obligations” or “Parity Bonds” means any other bonds and other obligations now or hereafter issued or incurred payable from the Net Revenues and issued or incurred with a lien on the Net Revenues on parity with the Series 2024B Bonds.

“Paying Agent” means the City Clerk-Treasurer or any successor thereto designated by the Commission to act in such capacity for the Series 2024B Bonds.

“Project” means construction financing for acquiring, extending, enlarging, bettering, repairing or otherwise improving the System.

“Project Fund” means the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B, Project Fund” created by Section 14 hereof.

“Purchaser” means the Bank of the Southwest to whom the Series 2024B Bonds are to be originally sold and delivered.

“Registrar” means the City Clerk-Treasurer or any successor thereto designated by the Commission to act in such capacity for the Series 2024B Bonds.

“Revenues”, “Gross Revenues”, “income” or “gross income” means all income and revenues (including but not limited to interest income from the investment of System revenues) derived by the City from the operation of the System, or any part thereof, whether resulting from improvements, extensions, enlargements, repairs or betterments to the System, or otherwise, and includes all revenues derived by the City or any municipal corporation succeeding to the rights of the City, from the System and from the sale and use of water service and facilities, or any combination thereof, to the residents of what is now the City (including all territorial annexations which may be made while the Series 2024B Bonds or any part thereof are outstanding), or from the sale and use of water service and facilities, by means of the System owned and operated by the City as the same may at any time exist to serve customers outside the City limits as well as customers within the City limits.

“Series 2024B Bonds” means the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B” authorized by Section 5 hereof.

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

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Commission and the officers of the City directed toward the Project and toward the issuance of the Series 2024B Bonds and the sale of the Series 2024B Bonds to the Purchaser is hereby ratified, approved and confirmed.

Section 3. Authorization of Project. The Project shall be constructed and acquired at a total estimated cost not exceeding \$1,065,984 with costs in excess of the amount of the purchase price of the Series 2024B Bonds to be defrayed from sources other than proceeds from the issuance of the Series 2024B Bonds.

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

A. It is in the best interest of the City and its residents to undertake the sale of the Series 2024B Bonds.

B. Moneys available for the Project from all sources other than the issuance of the Series 2024B Bonds are not sufficient to accomplish the Project.

C. The issuance by the City of the Series 2024B Bonds under the Act to provide funds for the Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

D. The Net Revenues may lawfully be pledged to secure the payment of the Series 2024B Bonds as set forth herein.

E. The net effective interest rate on the Series 2024B Bonds of 5.00% is less than the statutory maximum of 12% per annum.

Section 5. The Series 2024B Bonds.

A. Authorization. Pursuant to the findings of Section 4 hereof, it is hereby declared that the City, pursuant to the Act, shall issue and sell the Series 2024B Bonds. The Series 2024B Bonds, in the principal amount of \$1,065,984, are hereby authorized to be issued and sold at par to the Purchaser.

B. Details of the Series 2024B Bonds. There are hereby authorized and created a series of bonds designated as the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B.”

The Series 2024B Bonds shall be dated as of the date of issuance and delivery, shall be originally issued as one bond in the denomination of \$1,065,984, numbered R-1, shall be payable to the registered owner, and shall bear interest on the outstanding principal amount advanced under the Series 2024B Bonds at a rate of 5.00% per annum calculated from the date of each advance to the repayment of each advance, calculated on the basis of a 365-day year, actual number of days elapsed. Interest payments shall be due monthly after the first advance until final maturity of the Series 2024B Bonds. Principal on the Series 2024B Bonds shall become due and payable upon maturity of the Bonds, which shall be on or about December 1, 2026 (i.e., twenty-four months after issuance of the Series 2024B Bonds).

The form, term, and provisions of the Series 2024B Bonds, in the form set forth in Section 12 hereof are hereby approved with only such changes therein as are not inconsistent with this Ordinance.

Section 6. Prior Redemption.

A. Optional Redemption, Date and Price. The Series 2024B Bonds are subject to prior redemption at the option of the City on any date, in whole or in part, as the City may determine, at a redemption price equal to the principal amount being redeemed, plus accrued interest to the date fixed for redemption. Any partial redemption of the Series 2024B Bonds shall be in inverse order of principal maturity and, after principal redemptions, if any, interest thereafter shall accrue only upon the then outstanding principal amount of Series 2024B Bonds.

B. Notice. Notice of redemption shall be given by the Registrar by sending a copy of such notice by first-class, postage prepaid mail, or by electronic transmission, at least thirty (30) days prior to the redemption date to the registered owner of the Series 2024B Bonds to be redeemed at the address shown on the registration books kept by the Registrar as of the close of business of the Registrar on the fifth day prior to the mailing of notice. Notice of redemption shall specify the principal amount to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner provided above, the principal amount of the Series 2024B Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem the principal amount of the Series 2024B Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the principal amount of the Series 2024B Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Series 2024B Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the principal amount of the Series 2024B Bonds so called for redemption plus accrued interest to the redemption date.

Section 7. Signatures, Execution and Authentication of Series 2024B Bonds.

A. Filing of Signatures. Prior to the execution of any Series 2024B Bond, the Mayor and City Clerk-Treasurer may each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Series 2024B Bonds.

B. Execution. The Series 2024B Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor and shall be attested with the facsimile or the manual signature of the City Clerk-Treasurer. There shall be affixed to each Series 2024B Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Series 2024B Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Series 2024B Bonds when authenticated and bearing the manual or facsimile signature of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor and City Clerk-Treasurer, at the time of the execution of the Series 2024B Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Series 2024B Bonds or certificates pertaining to the Series 2024B Bonds.

C. Authentication. No Series 2024B Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed 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 Series 2024B Bonds issued hereunder.

Section 8. Negotiability. The Series 2024B Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the Bondholder shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code--Investment Securities.

Section 9. Payment and Presentation of Series 2024B Bonds for Payment. Principal and interest on the Series 2024B Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal and interest on the Series 2024B Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 5th calendar day next preceding the payment date (the "Record Date"). If any payment on the Series 2024B Bonds remains unpaid when due, the payment shall continue to bear interest at the rate or rates designated in, and applicable to, the Series 2024B Bonds. The records of the Paying Agent and the Registrar with respect to payments paid to the registered owners of the Series 2024B Bonds shall be conclusive and no posting or notation of payments on the Series 2024B Bond forms shall be required.

Section 10. Registration, Transfer, Exchange and Ownership of Series 2024B Bonds.

A. Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Series 2024B Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of the fully registered Series 2024B Bonds at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall, without cost to the registered owner, authenticate and deliver, not more than three (3) business days after receipt of the Series 2024B Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Series 2024B Bond or Series 2024B Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Series 2024B Bonds (i) during the period of fifteen (15) days next preceding mailing of notice calling the Series 2024B Bonds for prior redemption as herein provided, or (ii) after mailing to the registered owner of notice calling such Series 2024B Bonds for prior redemption as herein provided. The Registrar shall close books for change of registered owners' addresses five (5) days prior to each payment date. Transfers shall be permitted within the five (5) days prior to each payment date; such transfer shall not include a transfer of the principal and interest payable on such payment date.

C. Owner of Series 2024B Bonds. The entity in whose name the Series 2024B Bonds are registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal or interest on the Series 2024B Bonds shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2024B Bonds to the extent of the sum or sums so paid.

D. Lost Series 2024B Bonds. If the Series 2024B Bonds shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Series 2024B Bonds, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, authenticate and deliver replacement Series 2024B Bonds of a like aggregate principal amount and of the same series, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Series 2024B Bonds shall have matured, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

Section 11. Special Obligations. The Series 2024B Bonds, together with interest accruing thereon, shall be payable and collectible solely out of Net Revenues, the revenues of which are so pledged, and the Bondholders may not look to any general or other municipal fund for the payment of principal and interest on such obligations, except the designated special funds pledged therefor. The Series 2024B Bonds shall not constitute 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. Nothing herein shall prevent the City from using any other legally available funds for the payment of the principal of and interest on the Series 2024B Bonds, in its sole discretion.

Section 12. Form of Series 2024B Bonds. The Series 2024B Bonds and the forms of authentication and assignment to be attached thereto shall be in substantially the following form with such changes therein as are not inconsistent with this Ordinance.

(Form of Series 2024B Bonds)

UNITED STATES OF AMERICA
STATE OF NEW MEXICO COUNTY OF SIERRA
CITY OF TRUTH OR CONSEQUENCES
WATER SYSTEM IMPROVEMENT REVENUE BONDS
SERIES 2024B

No. R-1 **\$1,065,984**

Interest Rate	Maturity Date	Date of Bonds
5.00%	[December 1], 2026	December __, 2024

REGISTERED OWNER: BANK OF THE SOUTHWEST

PRINCIPAL AMOUNT: ONE MILLION SIXTY-FIVE THOUSAND NINE HUNDRED EIGHT-FOUR DOLLARS

The City of Truth or Consequences, New Mexico (the "City") for value received, hereby acknowledges itself indebted and promises to pay, but only from the sources and in the manner provided for herein, to the Registered Owner stated above, or its registered assigns, in lawful money of the United States of America the principal amount stated above, together with interest thereon, in the amounts and on the dates set forth in the debt service schedule provided by the Registered Owner, until full payment of the principal amount plus accrued interest has been made. This bond shall bear interest on the outstanding principal advanced on the Series 2024B Bonds at the rate of 5.00% per annum, calculated from the date of each advance on the basis of a 365-day year, actual number of days elapsed. Interest payments shall be due monthly after the first advance until final maturity of the Series 2024B Bonds. Principal on the Series 2024B Bonds shall become due and payable on the Maturity Date. Payment on the Series 2024B Bonds shall be payable upon presentation and surrender of the Series 2024B Bonds to the City Clerk-Treasurer, as Paying Agent. If any payment of this bond is not made as herein provided, the payment shall continue to bear interest at the Interest Rate stated above until the payment is paid in full. The principal and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or Registrar.

This bond is a fully registered bond of the City in the aggregate principal amount of \$1,065,984, designated as the "City of Truth or Consequences, New Mexico Water System

Improvement Revenue Bonds, Series 2024B” (the “Series 2024B Bonds”) issued under and pursuant to City Ordinance No. 769 (the “Bond Ordinance”).

This bond may be redeemed, in whole or in part, at the option of the City on any date on at a redemption price equal to the principal amount being redeemed, plus accrued interest to the date fixed for redemption.

Notice of redemption will be given by providing at least thirty (30) days prior written notice by first-class, postage prepaid mail to the owner of the Series 2024B Bonds, to be redeemed at the address shown on the registration books as of the close of business of the Registrar on the fifth day prior to the mailing of notice. The notice of redemption shall specify the redemption date and the principal amount thereof, plus accrued interest to the redemption date, and that from and after such date interest will cease to accrue. Notice having been given in the manner provided above, the Series 2024B Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem the Series 2024B Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Series 2024B Bonds to be redeemed shall not be deemed to be outstanding and shall cease to bear interest from and after such redemption date.

Upon surrender for transfer or exchange of this bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar will authenticate and deliver in the name of the transferee or registered owner, as appropriate, a new bond in fully registered form of the same outstanding principal amount, maturity and interest rate, in an authorized denomination. The person in whose name any Bond is registered will be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal of and interest on the Series 2024B Bonds will be made only to or upon the order of the registered owner thereof or his legal representative. All such payments will be valid and effectual to satisfy and discharge the liability upon the Series 2024B Bonds to the extent of the sum so paid.

This bond and the payments of principal hereof and interest hereon do 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 out of the net revenues of the City’s water utility system (the “Net Revenues”) as more particularly described in the Bond Ordinance. The holder of this bond may not look to any general or other municipal fund for payment of the principal of or interest on this bond. The City has covenanted to pay the Net Revenues an amount sufficient to pay specified operation and maintenance expenses of the System, and the regularly scheduled payments on the Series 2024B Bonds and other Parity Obligations when due. For a more complete description of the nature and extent of the security, reference is made to the Bond Ordinance.

The Series 2024B Bonds are issued by the City for the purpose of construction financing for acquiring, extending, enlarging, bettering, repairing or otherwise improving the City's Water Utility System (the “Project”).

The Series 2024B Bonds are secured by a pledge of the Net Revenues. The Series 2024B Bonds constitute an irrevocable first lien (but not an exclusive first lien) upon the Net Revenues on parity with the lien thereon of the City's outstanding Parity Obligations (as defined in the Bond Ordinance). Additional bonds may be issued and made payable from the Net Revenues, subject to express conditions, having a lien thereon on parity with the lien of the Series 2024B Bonds in accordance with the provisions of the Bond Ordinance. The City covenants and agrees with the owner of this bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

The Series 2024B Bonds will not be entitled to any benefit under the Bond Ordinance or become valid or obligatory for any purpose until an authorized officer of the Registrar has manually signed the Certificate of Authentication hereon.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Series 2024B Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened, as required by law, and that the Series 2024B Bonds do not exceed or violate any constitutional, statutory or charter limitation. No member of the City Commission, or any officer or employee of the City, including those executing this bond, shall be personally liable on any Series 2024B Bonds.

IN WITNESS WHEREOF, the City of Truth or Consequences, in the State of New Mexico, has caused this bond to be signed and executed on the City's behalf by the signatures of its Mayor and City Clerk-Treasurer and has caused the seal of the City to be affixed hereon all as of the Date of Bond specified above.

CITY OF TRUTH OR CONSEQUENCES
NEW MEXICO

By _____
Mayor

[SEAL]

By _____
Clerk-Treasurer

(Form of Certificate of Authentication)

Date of Registration: _____

This bond is one of the Series 2024B Bonds authorized to be issued by and under the provisions of the Bond Ordinance.

By _____
Clerk-Treasurer
Truth or Consequences, New Mexico

(End of Form of Certificate of Authentication)

(Form of Assignment)

ASSIGNMENT CLAUSE

For value received, the undersigned sells, assigns and transfers unto _____, whose social security or tax identification number is _____, the within bond and all rights thereunder, and does hereby irrevocably constitute and appoint _____ as legal representative to transfer the within bond on the books of the Registrar, with full power of substitution in the premises.

DATED: _____

NOTE: The above signature must correspond with the name as written on the face of the within bond in every particular.

(End of Form of Assignment)

(End of Form of Bonds)

Section 13. Sale of Series 2024B Bonds. The sale and award of the Series 2024B Bonds to the Purchaser are hereby ratified, approved and confirmed. The Mayor and other City officers are hereby authorized to do all things necessary and consistent with this Ordinance in connection with the sale, issuance and delivery of the Series 2024B Bonds.

Section 14. Delivery of the Series 2024B Bonds and Disposition of Proceeds. When the Series 2024B Bonds have been duly executed and authenticated, they shall be delivered to the

Purchaser. By purchasing the Series 2024B Bonds, the Purchaser agrees to pay to the City the principal amount of the Series 2024B Bonds.

The City shall account for the proceeds of the Series 2024B Bonds as follows:

A. Accrued Interest. The Series 2024B Bonds shall be dated as of the date of actual issuance and delivery and no accrued interest shall be payable by the Purchaser for the period prior to the date of actual issuance and delivery of the Series 2024B Bonds.

B. Sale Proceeds. The proceeds from the sale of the Series 2024B Bonds, as advanced by the Purchaser, shall be deposited by the City promptly upon the receipt thereof in a separate account in an Insured Bank, designated by the City, which account is hereby created and shall be known as the "City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2024B, Project Fund." The Insured Bank shall be required to pledge collateral security for all deposits in the Project Fund in accordance with the laws of the State of New Mexico, and laws and regulations of the United States of America. The monies in the Project Fund, except as herein otherwise specifically provided, shall be used and paid out solely for the purposes specified in this Ordinance.

C. Purchaser Not Responsible. The Purchaser of the Series 2024B Bonds shall not be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

Section 15. The Project Fund.

A. Withdrawals. Monies shall be withdrawn from the Project Fund for the Project by the Mayor and the City Manager.

B. Disposition of Unspent Amounts in the Project Fund. When all work on the Project is completed in accordance with the plans and specifications and all amounts due therefor are paid, the Consulting Engineer shall file with the City a certificate so stating, and thereupon the City shall cause the Insured Bank to transfer to the Bond Fund all funds remaining in the Project Fund, if any, and such proceeds shall be promptly used to pay debt service on the Series 2024B Bonds.

Section 16. Special Funds.

A. The Income Fund is hereby continued. The Water Utility System Gross Income Fund shall be used for the deposit of the Gross Revenues of the System and shall be a special fund, not part of the general treasury or general fund of the City.

B. The Operation and Maintenance Fund is hereby continued as a separate account in the Income Fund and shall be used for the deposit of revenues of the System to be used for the payment of Operation and Maintenance Expenses of the System as set forth in Section 17 of this Ordinance.

C. The Bond Fund is hereby created as a separate account in the Income Fund and shall be used for deposit of Net Revenues of the System to be used for the payment of principal and interest on the Series 2024B Bonds as set forth in Section 17 hereof.

Section 17. Administration of Income Fund. So long as the Series 2024B Bonds shall be outstanding either as to principal or interest, or both, the Gross Revenues of the System shall be set aside and deposited into the Income Fund and the following monthly payments shall be made from the Income Fund:

A. Operation and Maintenance Expenses. Money in the Income Fund shall first be disbursed to make deposits into the Operation and Maintenance Fund. There shall be deposited in the Operation and Maintenance Fund each month an amount sufficient to meet the current Operation and Maintenance Expenses of the month.

B. Bond Fund. Second and concurrently with the monthly payments required by paragraph C of this Section, and subject to and after the payments required by paragraph A of this Section, from any moneys remaining in the Income Fund there shall be deposited to the Bond Fund the following:

(1) Monthly, commencing on the first of the month immediately succeeding the issuance and delivery of the Series 2024B Bonds, an amount which is necessary, together with any moneys therein and available therefor, to pay the payment of principal on the Series 2024B Bonds at the Maturity Date and to pay interest monthly based on advances of Bond proceeds; and

(2) If prior to the Maturity Date, there has been accumulated in the Bond Fund the entire amount necessary to pay the principal and interest due on the Maturity Date, the payment required in subparagraph (1) of this subsection, may cease or be appropriately reduced.

Except as provided in paragraph 1 of this Section, the moneys in the Bond Fund shall be used only to pay the principal of and interest on the Series 2024B Bonds as the same become due.

C. Payment of the Additional Parity Obligations. Concurrently with the payments required by paragraph B of this Section, and subject to and after the payments required by paragraph A of this Section, any balance remaining in the Income Fund shall be used by the City for the payment of principal of and interest on the Parity Obligations (including, in each case, reserves therefor), if any, issued and payable from the Net Revenues, as the same accrue.

D. Payment of Subordinate Obligations. Third, and subject to and after the payments required by paragraphs A through C of this Section, from any monies remaining in the Income Fund, there shall be made the payment of interest on and principal of, and reserves for, additional bonds or other obligations hereafter authorized to be issued and payable from the Net Revenues with a lien thereon which is subordinate and junior to the lien thereon of Parity Obligations.

E. Use of Surplus Revenues. Gross Revenues accumulated over and above that needed to pay Operating and Maintenance Expenses and debt service for any outstanding obligations may only be retained or used to make prepayments on the Parity Obligations or subordinate obligations or for System improvements. Gross Revenues cannot be used to pay any expenses which are not directly incurred for the System.

Section 18. General Administration of Funds. The funds designated in Sections 16 and 17 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 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 stated purpose. Payments shall be made into the proper account not later than the first day of the month except when the first day shall be a Sunday or legal holiday, and then payment shall be made on the next succeeding business day. No later than three (3) days prior to each payment date, moneys sufficient to pay interest and principal then due on the Series 2024B Bonds shall be transferred to the Paying Agent. Nothing in this Ordinance shall prevent the Commission from establishing one or more bank accounts in an Insured Bank or Insured Banks for all the funds required by this Ordinance or, except for the Project Fund which must be maintained as a separate account, shall prevent the combination of such funds and accounts with any other bank account or accounts for other funds and accounts of the City.

B. Investment of Moneys. Moneys in any fund or account not immediately needed may be invested in any investment permitted by law. 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 Clerk-Treasurer 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.

Section 19. Lien on Net Revenues. The Series 2024B Bonds shall constitute an irrevocable first lien (but not an exclusive first lien) on, and the City hereby grants to the owners of the Series 2024B Bonds a security interest in, the Net Revenues as set forth herein and on parity with any existing Parity Obligations or future Parity Obligations which may be issued. The Net Revenues are hereby authorized to be pledged and are hereby pledged and the City grants a security interest therein and in the funds on deposit in the Bond Fund and Project Fund for the payment of the principal of and interest on the Series 2024B Bonds.

Section 20. Additional Bonds or Other Obligations Payable from Net Revenues.

A. Earnings Test. Nothing in this ordinance contained shall be construed to prevent the issuance by the City of additional Parity Obligations payable from the Net Revenues and constituting a lien upon said revenues on a parity with, but not prior or superior to the lien of the Series 2024B Bonds, nor to prevent the issuance of bonds or other obligations refunding all or

a part of the Series 2024B Bonds, provided, however, that before any such additional Parity Obligations are authorized or actually issued, the following tests shall be satisfied:

(1) The City is not, and has not been in default as to making any payments required by Section 17 hereof during the twelve months immediately preceding the issuance of such additional Parity Obligations, or if none of the Series 2024B Bonds have been issued and Outstanding for a period of at least twelve months, then for the longest period of time any of such Series 2024B Bonds have been issued and Outstanding; and

(2) The Net Revenues for the Fiscal Year immediately preceding the date of issuance of such additional Parity Obligations shall have been sufficient to pay an amount representing one hundred twenty percent (120%) of the combined average annual principal and interest requirements coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations payable from and constituting a lien upon the Net Revenues and the additional Parity Obligations proposed to be issued (excluding any reserves therefor).

B. Certification or Opinion of Earnings. A written certification or opinion by an Independent Accountant or the City Manager that Net Revenues for the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Obligations are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the proposed additional Parity Obligations on a parity with the Series 2024B Bonds.

C. Consideration of Additional Revenue Permitted. In determining whether or not additional Parity Obligations may be issued as aforesaid, consideration may be given to any probable increase in the estimated Net Revenues of the System that may result from the expenditure of funds proposed to be derived from the issuance and sale of the proposed additional Parity Obligations or an increase in System rates.

D. Subordinate Obligations Permitted. Nothing herein contained shall be construed to prevent the City from issuing bonds or other obligations payable from the revenues of the System and having a lien thereon subordinate, inferior and junior to the lien of the Series 2024B Bonds.

E. Superior Obligations Prohibited. Nothing herein contained shall be construed to permit the City to issue bonds or other obligations payable from the revenues of the System and having a lien thereon prior and superior to the lien of the Series 2024B Bonds.

Section 21. Refunding Bonds. The provisions of Section 20 hereof are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the Commission shall find it desirable to refund the Outstanding Series 2024B Bonds, the Series 2024B Bonds may be refinanced and paid, in whole or in part, in advance of their maturity.

B. Limitations upon Issuance of Parity Refunding Obligations. No refunding bonds or other refunding obligations payable from any revenues of the System shall be issued on a parity with the Series 2024B Bonds, unless the refunding bonds or other refunding obligations are issued in compliance with paragraph A of Section 20 hereof.

C. Limitations upon Issuance of any Refunding Obligations. Any refunding bonds or other refunding obligations payable from any revenues of the System shall be issued with such details as the Commission may provide by ordinance.

Section 22. Protective Covenants. The City covenants and agrees with each and every holder of the Series 2024B Bonds:

A. Public Utility. The municipal water facilities of the City shall continue to constitute a public utility designated as the System and shall hereafter be operated and maintained as a public utility.

B. Use of Series 2024B Bonds Proceeds. The City, with the proceeds derived from the sale of the Series 2024B Bonds, shall proceed to complete and acquire the Project without delay.

C. Payment of the Series 2024B Bonds. The City shall promptly pay the principal of and interest on the Series 2024B Bonds at the place, on the dates, and in the manner specified herein. Principal and interest on the Series 2024B Bonds are payable solely from Net Revenues, and the special funds herein authorized for such purpose.

D. City's Existence. The City shall maintain its corporate identity and existence so long as the Series 2024B Bonds remain outstanding, unless another political subdivision or authority by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of the holder of the Series 2024B Bonds.

E. Impairment of Contract. Except with the approval of the holder of the Outstanding Series 2024B Bonds, the City agrees that this Ordinance shall not be repealed or otherwise directly or indirectly modified, in such a manner as to adversely affect the Outstanding Series 2024B Bonds.

F. Use Charges. Rates for services rendered by the System shall be reasonable and just, taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation and the amounts necessary to retire all bonds payable from Net Revenues, and any reserves therefor. There shall be charged against all users, including the City, rates and amounts, which shall be increased from time to time if necessary, sufficient to produce revenues to pay the annual Operation and Maintenance Expenses, and 120% of the combined average annual principal and interest requirements on all outstanding Parity Bonds and other obligations payable from Net Revenues. No free services of the System shall be furnished by the City. Any use of the System by the City shall be paid for from the City's general fund at the reasonable value of the use so made. Income so derived from the City shall be treated in the

same manner as any other System income. The City is granted a statutory lien upon realty for unpaid rates and charges pursuant to Section 3-23-6 NMSA 1978. The City covenants and agrees that it will cause any lien on each property to be perfected and enforced in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-7 NMSA 1978.

G. Levy and Reduction of Charges. Prior to the delivery of the Series 2024B Bonds, the City has established and levied the required rates and charges for use of the System. No reduction in any initial rate schedule may be made unless:

(1) The City has complied with Section 17 hereof for at least one Fiscal Year immediately preceding such reduction; and

(2) The audit for the one full Fiscal Year immediately preceding such reduction discloses that the estimated revenues resulting from the proposed rate schedule will be sufficient to meet the requirements of paragraph F of this Section.

H. Efficient Operation. The City shall operate the System as long as the Series 2024B Bonds are outstanding and shall make such improvements and repairs to the System as may be necessary to insure its economical and efficient operation and its ability to meet demands for service and its continual operation and maintenance in good condition.

I. Records of System. Separate records will be kept showing complete and correct entries of all transactions relating to the System. Such records shall include monthly entries showing the number of customers, the revenues received, a detailed statement of expenses, and such other items as deemed relevant.

J. Right to Inspect. The Purchaser or any other owner of the Series 2024B Bonds or their duly authorized agents shall have the right at all reasonable times to inspect the System and all records, accounts and data relating thereto.

K. Audits and Budgets. So long as the Series 2024B Bonds shall be Outstanding, the City shall furnish to the Purchaser, and to any owner or owners or insurers of the Series 2024B Bonds who has requested the same, not later than thirty (30) days after the close of each three-month fiscal period, complete operating and income statements of the System in reasonable detail covering such three-month period, and, not later than sixty (60) days after the close of each fiscal year, complete financial statements of the System to the owner of the Series 2024B Bonds covering such fiscal year. In addition, the City will prepare and adopt prior to the beginning of each fiscal year, a budget for the ensuing fiscal year for the System, such budget to include an estimate of revenues and expenses during such fiscal year.

L. Billing Procedure and Discontinuance of Service. All System bills shall be sent out on a regularly established day of each month in advance or after service is rendered. If bills are not paid within a reasonable time after such date, they shall be collected in any lawful manner. Upon nonpayment of charges, water service will be discontinued if permitted by law and will be restored only upon payment of the delinquent amounts plus the cost of restoration.

M. Use of Bond Fund. The Bond Fund shall be used solely and only, and said funds are hereby pledged, for the purposes set forth in this Ordinance.

N. Charges and Liens upon System. The City, from Revenues, will pay all taxes and governmental charges lawfully levied in respect of the System when due. The City will comply with all valid requirements of any governmental authority relative to the System and will not create or permit to be created any lien or charge on the System or the Revenues except as permitted herein. The City will satisfy within sixty days after the same shall accrue all lawful claims and demands which might by law become a lien on the System or upon the Revenues unless the validity thereof is being contested in good faith by appropriate legal proceedings.

O. Insurance. The City, in its operation of the System, will carry fire and extended coverage insurance, public liability insurance and other types of insurance in such amounts and to such extent as is normally carried by private corporations operating facilities of the same type. The City will also maintain, as provided by law, a self-insurance fund to cover workmen's compensation insurance or will carry equivalent insurance. The cost of insurance shall be considered one of the Operation and Maintenance Expenses of the System. In the event of property loss or damage, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged, any remainder shall be treated as Net Revenues, and shall be subject to distribution in the manner provided hereinabove in Section 17, for Net Revenues derived from the operation of the System. Nothing herein shall prevent the City from establishing a funded self-insurance program.

P. Competing System. The City shall not grant any franchise or license to a competing system, or permit any person or organization to sell water service and facilities within the City (unless required to do so by law). To the extent permitted by law, the City will require all residents to connect to the System facilities.

Q. Alienating System. While the Series 2024B Bonds are outstanding, the City will not sell, lease, mortgage, pledge or otherwise alienate the System, or any part thereof. In the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues in the manner provided hereinabove in Section 17 hereof.

R. Extension of Interest Payments. The City will not extend or be a party to the extension of the time for paying any claim for interest on the Series 2024B Bonds. Any installment of interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Ordinance except subject to the prior payment in full of the principal of all Series 2024B Bonds and interest which has not been extended.

S. Management of the System. The City shall employ competent and experienced management personnel for the System. If an "event of default" shall occur and continue for a period of sixty (60) days or if the Net Revenues in any Fiscal Year fail to equal principal, interest and reserve requirements for all Outstanding Parity Obligations and other obligations payable from the Net Revenues, the City shall retain an independent consultant who is qualified in the management of facilities similar to the System, to assist in the management of the

System so long as such event of default continues or the Net Revenues are less than the amount designated.

T. Fidelity Bonds. Each municipal official responsible for receiving income and maintaining the accounts of the System shall be bonded at all times, which bond shall be conditioned upon the proper allocation of such income. The cost of each bond shall be considered one of the Operation and Maintenance Expenses of the System.

U. Performing Duties. To the extent permitted by applicable law, the City will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City, including but not limited to, the making and collecting of reasonable and sufficient rates and charges for services rendered or furnished by the System as hereinbefore provided.

V. Service Connections. The City shall provide adequate service to all persons within the service area of the System who can feasibly and legally be served.

Section 23. Events of Default. It is an "event of default" if:

A. Nonpayment of Principal. Payment of principal of any Series 2024B Bonds is not made when due either at maturity or by proceedings for prior redemption, or otherwise; or

B. Nonpayment of Interest. If payment of any installment of interest shall not be made when the same becomes due and payable; or

C. Incapable to Perform. The City becomes incapable of fulfilling its obligations hereunder; or

D. Default of any Provision. The City defaults in the punctual performance of any other of its covenants hereunder for sixty (60) days after written notice shall have been given to the City by the holders of twenty-five percent (25%) of the principal amount of the Series 2024B Bonds then outstanding.

Section 24. Remedies on Default. Upon the happening and continuance of any event of default, the holder or holders of not less than twenty-five percent (25%) of the principal amount of the Series 2024B Bonds then outstanding, or a trustee therefor, may protect and enforce the rights of any owner of Series 2024B Bonds by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenant, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief or requiring the Commission to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all owners of Series 2024B Bonds. Any receiver appointed to protect the rights of owners of Series 2024B Bonds may take possession and operate and maintain the System in the same manner as the City itself might do. The failure of the owner of the Series 2024B Bonds to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any

other rights and the exercise of any right by any owner of the Series 2024B Bonds shall not be deemed a waiver of any other right.

Section 25. Duties upon Default. Upon the happening of any event of default, the City will perform all proper acts to protect and preserve the security created for the prompt payment of the principal of and interest on the Series 2024B Bonds. The holders of not less than twenty-five percent (25%) in the principal amount of the Series 2024B Bonds, after written demand, may proceed to protect and enforce the rights provided by this Section and by Section 24.

Section 26. Amendment of Ordinance. This Ordinance may not be amended without the written consent of the owner of the Series 2024B Bonds.

Section 27. Delegated Powers. The officers of the City be, and they hereby are, authorized and directed to take all action required by this Ordinance, and all such other action as may be necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing, any required printing of the Series 2024B Bonds and the execution of such certificates as may be required by the Purchaser or bond counsel.

Section 28. Repeal. This Ordinance shall not be repealed unless the Series 2024B Bonds have been discharged in full or provision has been fully made therefor.

Section 29. Limitation of Action. After the passage of 30 days from the publication required by Section 32 hereof, any action attacking the validity of any proceedings had or taken by the City preliminary to and in the authorization and issuance of the Series 2024B Bonds, shall be perpetually barred.

Section 30. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 31. Effective Date. Upon its adoption, final passage and approval, this Ordinance shall be recorded in the book of ordinances of the City kept for that purpose and authenticated by the signatures of the Mayor and the City Clerk-Treasurer and the seal of the City affixed hereto. The title and general summary of the subject matter contained in this Ordinance (set out in Section 32 hereof) shall be published in a newspaper which is of general circulation in the City in accordance with law, and the Ordinance shall be in full force and effect five days after such publication and posting as provided by law.

Section 32. General Summary for Publication. The title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
NOTICE OF ADOPTION OF ORDINANCE

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 769 (the "Ordinance") duly adopted and approved by the City Commission of the City of Truth or Consequences, New Mexico, on October __, 2024. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk-Treasurer, 505 Sims Street, Truth or Consequences, New Mexico. The title of the Ordinance is:

AUTHORIZING THE ISSUANCE OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO WATER SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2024B, IN THE PRINCIPAL AMOUNT OF ONE MILLION SIXTY-FIVE THOUSAND NINE HUNDRED EIGHTY-FOUR DOLLARS (\$1,065,984) FOR THE PURPOSE OF CONSTRUCTION FINANCING FOR ACQUIRING, EXTENSION, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE CITY'S WATER SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

The title sets forth a general summary of the subject matter contained in the Ordinance. This notice constitutes compliance with Section 6-14-6 NMSA 1978.

(End of Form of Summary of Ordinance for Publication)

PASSED, APPROVED, AND ADOPTED THIS 23RD DAY OF OCTOBER, 2024.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

MAYOR

[SEAL]

ATTEST:

CLERK-TREASURER

Commissioner _____ then moved adoption of the foregoing ordinance, duly seconded by Commissioner _____. The motion to adopt said ordinance, as amended, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Those Absent:

_____ () Commissioner having voted in favor of said motion, the motion to suspend the rules was thereupon declared by the Mayor to have passed.

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

Dated this 23rd day of October 2024.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

MAYOR

[SEAL]

ATTEST:

CLERK-TREASURER



Member FDIC

True to you.

September 4, 2024

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 in which Bank of the Southwest would purchase a Bond from the City of Truth or Consequences., for the Water System Performance Improvements-2 Engineering Contract.

**Requested Loan Amount
and Purpose:**

\$1,065,983.36 For the Pre-Development financing of the Water System, Improvement-Phase 2 Water Application, approved by USDA Letter of Conditions, dated 7/30/24.

Interest Rate:

5.00%, calculated from the date of each advance until the repayment of each advance

Terms:

24-month interim line of credit

Repayment:

Monthly Interest payments and one Principal payment due at Maturity

Closing Costs:

All ordinary and customary closing costs such as a 1% origination fee.

Collateral:

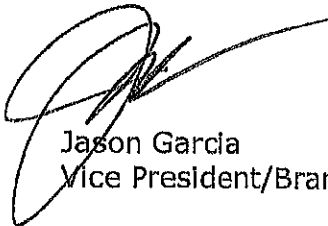
City of Truth or Consequences Bond

Terms proposed herein shall expire thirty (30) days from the date of this letter. Bank of the Southwest will require various conditions precedent to each advance as detailed by USDA Letter of Conditions dated 7/30/24.

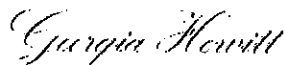
These elements include certain customary representations and warranties as well as the above-described conditions, including documentation requested by legal review. Those matters which are not covered by or made clear herein are subject to mutual agreement of the parties and all matters are subject 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 BOSW would like to express appreciation to you for giving Bank of the Southwest this opportunity.

Sincerely,



Jason Garcia
Vice President/Branch Manager



Georgla Hewitt
Executive Vice President/Chief Lending Officer



United States Department of Agriculture

Rural Development

July 30, 2024

New Mexico
State Office

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

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

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

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

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

Dear Mayor Forrister:

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

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

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

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

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

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

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

Form RD 1940-1, "Request for Obligation of Funds"

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

The conditions are as follows:

SECTION I - PROJECT SCOPE

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION II – RATES & TERMS

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

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

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

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

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

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

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

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

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

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

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

Principal –

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

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

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

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

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

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

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

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

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

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

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

Waivers

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

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

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

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

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

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V – REQUIREMENTS PRIOR TO CLOSING

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

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

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

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

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

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

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

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

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

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

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

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

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

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

See Section VI for additional information regarding audits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

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

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

Sincerely,

**ELIZABETH
YBARRA**

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

Christine Griego by Elizabeth Ybarra Acting
Community Programs, Program Director

Attachments:

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

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

FORMS and BULLETINS:

Form AD-3031 "Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants" – Item 30
 Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy" - Item 15
 Form RD 440-22, "Promissory Note" – Item 6
 Form RD 442-2, "Statement of Budget, Income and Equity" – Items 45 and 46
 Form RD 442-3, "Balance Sheet" – Item 45
 Form RD 442-7, "Operating Budget" – Item 20
 Form RD 442-20, "Right-of-Way Easement" – Item 14
 Form RD 442-21, "Right-of-Way Certificate" – Item 14
 Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way" – Item 14
 Form RD 1927-9, "Preliminary Title Opinion" – Item 14
 Form RD 1927-10, "Final Title Opinion" – Item 28
 Form RD 1940-1, "Request for Obligation of Funds" – Pages 1 and 2
 Form RD 1942-8, "Resolution of Members or Stockholders" – Item 6
 Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 2
 Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 32 and 33
 Form UCC-1, "Financing Statement" – Item 6
 Form UCC-1Ad, "UCC Financing Statement Addendum" – Item 6
 SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Item 24
 RUS Bulletin 1780-7, "Legal Services Agreement" – Item 13
 RUS Bulletin 1780-9, "Water Users Agreement" - Items 15 and 17
 RUS Bulletin 1780-12, "Water and Waste System Grant Agreement" -- Item 6
 RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" – Items 11 and 12
 RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" – Item 6
 RUS Bulletin 1780-28, "Loan Resolution Security Agreement" – Item 6

Appendix A
(INSTRUCTIONS TO FIELD)

A. Reporting Total Compensation of Recipient Executives

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

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

B. Subaward and Subrecipients

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

Subrecipient means an entity that:

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

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

Appendix B

Build America, Buy America Evidence Standards

Manufacturers

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

Architects and Engineers

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

Resident Project Representative / Resident Inspector

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

Contractors

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

Appendix B

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

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



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: F.1

SUBJECT: Resolution No. 18 24/25 Budget Adjustment Request

DEPARTMENT: Finance Department

DATE SUBMITTED: October 16, 2024

SUBMITTED BY: Kerin Salcedo, Accounting Officer

WHO WILL PRESENT THE ITEM: Jocelyn Holguin, Finance Director

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

Recommendation:

Approval Resolution No. 18 24/25 Final Budget Adjustment Requests for Fiscal Year 2024-2025

Attachments:

- Resolution No 18 24/25
- Schedule of Budget Adjustments, Supporting Documentation

Fiscal Impact (Finance): Yes

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

Legal Review (City Attorney): N/A

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 10-23-24



RESOLUTION NO. 18 24/25

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

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

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

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

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

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

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

PASSED, ADOPTED and APPROVED this **23rd day of October, 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: 2024-25 10/23/2024
DFA Resolution Number: 18 24/25
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	101-1099-36410	NM STO Investment Income	Revenue	\$ 5,000.00	\$ 45,000		\$ 50,000	General Fund Tower Leases - Increase to account for interest FY 25
								\$ -	
2	101	101-1000-44613	Clerk Audio- Non Capital Items	Expense	\$ -	\$ 26,000		\$ 26,000	Gov. Body -Video/Audio Commision Chambers
								\$ -	
3	101	101-1004-44606	Finance -Office Supplies	Expense	\$ 4,500.00	\$ 1,500		\$ 6,000	Finance - Short Fall
3	101	101-1004-44613	Finance -Non Capital Items	Expense	\$ -	\$ 20,000		\$ 20,000	Finance - NM Correction Industry
3	101	101-1004-48599	Finance -Other Contractual Services	Expense	\$ 12,500.00	\$ 9,650		\$ 22,150	Finance - Back Ground Checks
								\$ -	
4	101	101-1099-38372	PD -Insurance Recovery	Revenue	\$ -	\$ 7,459		\$ 7,459	PD - Insurance claim for Dodge 2024
4	101	101-1007-47420	PD -Maint. Vehicle/Equip	Expense	\$ 53,881	\$ 7,459		\$ 61,340	PD - Insurance claim for Dodge 2024
								\$ -	
5	321	321-7042-31375	WISPI 2 Federal Grants	Revenue	\$ -	\$ 7,227,000		\$ 7,227,000	USDA Water System Performance Improvements 2 (WISPI 2)
5	321	321-7042-38387	WISPI 2 Loan Proceeds	Revenue	\$ -	\$ 2,673,000		\$ 2,673,000	USDA Water System Performance Improvements 2 (WISPI 2)
5	321	321-7042-60860	WISPI 2 Infrastructure	Expense	\$ -	\$ 9,900,000		\$ 9,900,000	USDA Water System Performance Improvements 2 (WISPI 2)
								\$ -	

ATTEST:

Angela Torres, Clerk-Treasurer (Date)

Rolf Hechler, Mayor

(Date)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: F.2

SUBJECT: Resolution No. 19 24/25 Budget Adjustment Request

DEPARTMENT: Finance Department

DATE SUBMITTED: October 17, 2024

SUBMITTED BY: Kerin Salcedo, Accounting Officer

WHO WILL PRESENT THE ITEM: Jocelyn Holguin, Finance Director

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

Recommendation:

Approval Resolution No. 19 24/25 Final Budget Adjustment Requests for Fiscal Year 2024-2025

Attachments:

Resolution No 19 24/25

- Schedule of Budget Adjustments, Supporting Documentation

Fiscal Impact (Finance): Yes

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

Legal Review (City Attorney): N/A

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 10-23-24



RESOLUTION NO. 19 24/25

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

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

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

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

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

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

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

PASSED, ADOPTED and APPROVED this **23rd day of October, 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

ENTITY NAME: City of Truth or Consequences
FISCAL YEAR: 2024-25 10/23/2024
DFA Resolution Number: 19 24/25
BAR NUMBER 6

For Local Government Division use only:

DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or TRANSFER (TO or FROM)	APPROVED BUDGET	ADJUSTMENT / INCREASE	ADJUSTMENT / DECREASE	ADJUSTED BUDGET	PURPOSE
1	21300	21300-0001-47122	DPS Law Enforcement Retention Appropriation	Revenue	\$ 225,000.00		\$ (225,000)	\$ -	Move LER year 1 FY 24 to Correct Fund LGBMS
1	21300	21300-3001-51063	Projected Retention Differential Disbursements	Expense	\$ 225,000.00		\$ (225,000)	\$ -	Move LER year 1 FY 24 to Correct Fund LGBMS
1	21220	21220-0001-47120	Law Enforcement Appropriation	Revenue		\$ 225,000		\$ 225,000	Move LER year 1 FY 24 to Correct Fund LGBMS
1	21220	21220-3001-51020	Salaries Full Time Positions	Expense		\$ 225,000		\$ 225,000	Move LER year 1 FY 24 to Correct Fund LGBMS
								\$ -	

ATTEST:

Angela Torres, Clerk-Treasurer (Date)

Rolf Hechler, Mayor

(Date)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item#: F.3

SUBJECT: Resolution No. 20 24/25 for the Sale of Surplus Property to be sold at the November 16, 2024, Willard Hall Auction.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: October 17, 2024

SUBMITTED BY: Angela A. Torres, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

Pursuant to Section 3-54-2 of the New Mexico State Statutes, 1978, Annotated, the City of Truth or Consequences has property that is no longer needed. The City will use Willard Hall Auctions to sell the surplus property belonging to the City on November 16, 2024, at the Sierra County Fair Barn.

Recommendation:

Approve Resolution No. 20 24/25 declaring the sale of surplus property with Willard Hall Auctions.

Attachments:

- Resolution No. 20 24/25
- Auction Items

Fiscal Impact (Finance): Choose an item.

Legal Review (City Attorney): Choose an item.

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. Resolution No. 20/24/25 Ordinance No. N/A

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 10-23-24



RESOLUTION NO. 20 24/25

A RESOLUTION DECLARING SURPLUS PROPERTY TO BE NONESSENTIAL FOR PUBLIC OR GOVERNMENT FUNCTIONS TO BE SOLD PURSUANT TO §3-54-2 NMSA

WHEREAS, the City Commission of the City of Truth or Consequences finds surplus property to be nonessential for public or government functions; and

Whereas, PURSUANT TO Section 3-54-2 of the New Mexico State Statutes, 1978, Annotated, the City of Truth or Consequences serves notice that the City will use Willard Hall Auctions to sell various surplus property belonging to the City.

NOW THEREFORE BE IT RESOLVED THAT:

- The City of Truth or Consequences may sell personal property having a value of more than two thousand five hundred (\$2,500.00) for public or private sale. If a private sale is held under this subsection, such sale shall be held only after notice is published at least twice, pursuant to the provisions of Subsection J or Section 3-1-2 NMSA 1978, not less than seven days apart, with the last publication not less than fourteen days prior to the sale.
- If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the municipality, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed sale of lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and shall be published according to the provisions of Subsection J of Section 3-1-2 NMSA 1978.
- The City of Truth or Consequences may sell at a private or public sale, exchange or donate real or personal property to the state, to any of its political subdivisions or to the federal government if such sale, exchange or gift is in the best interests of the public and is approved by the local government division of the department of finance and administration. The provisions of Section 6-6-11 NMSA 1978 shall not apply to such sale, exchange or a donation.

PASSED, APPROVED AND ADOPTED this 23rd day of October 2024.

Rolf Hechler, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk



PROPERTY DISPOSAL REQUEST FORM

PROPERTY ASSIGNED TO:

Date:	September 12, 2024	Department:	ELECTRIC
Department:	ELECTRIC	Location:	POLE YARD
		Individual:	
		Supervisor:	BO EASLEY

The following item(s) of controlled property need to be disposed of other than Departmental transfers:

	ITEM 1	ITEM 2	ITEM 3
Quantity:	80	1	
Tag Number:	N/A	?	
License # if any	N/A	614-19	
Brand/Model:	See attached picture	1987 JOHN DEERE 410C	
Description:	WOOD POLES	BACKHOE	
Serial/Vin #:	N/A	T0410CB736981	
Original Amount:		?	
Will This be Sold at Auction?	YES	YES	
Reason :	OLD/USED	OLD	

Fill in all spaces where applicable & submit to the Finance Department within 5 working days.

(Attach additional sheets if more than 6 items)

RELEASE REQUESTED BY:

Bo Easley
Employee Signature
Bo Easley
Department Head Signature
Electric Director
Title
9/12/2024
Date
9/12/2024
Date

APPROVED:

City Manager Signature
Date

CITY MANAGER SIGNATURE ONLY
APPROVES PROCESS TO BEGIN;
SIGNATURE DOES NOT
AUTOMATICALLY APPROVE
DISPOSAL.
CONTACT FINANCE DIRECTOR

FINANCE DIRECTOR OR DESIGNEE

RESOLUTION #

Date entered into system:

COMMISSION MEETING DATE:

By:

This form is to be used for any inventory marked for disposal; must also accompany items set for auction.

Original to Finance Department. Copies to: Requestor, Department Head

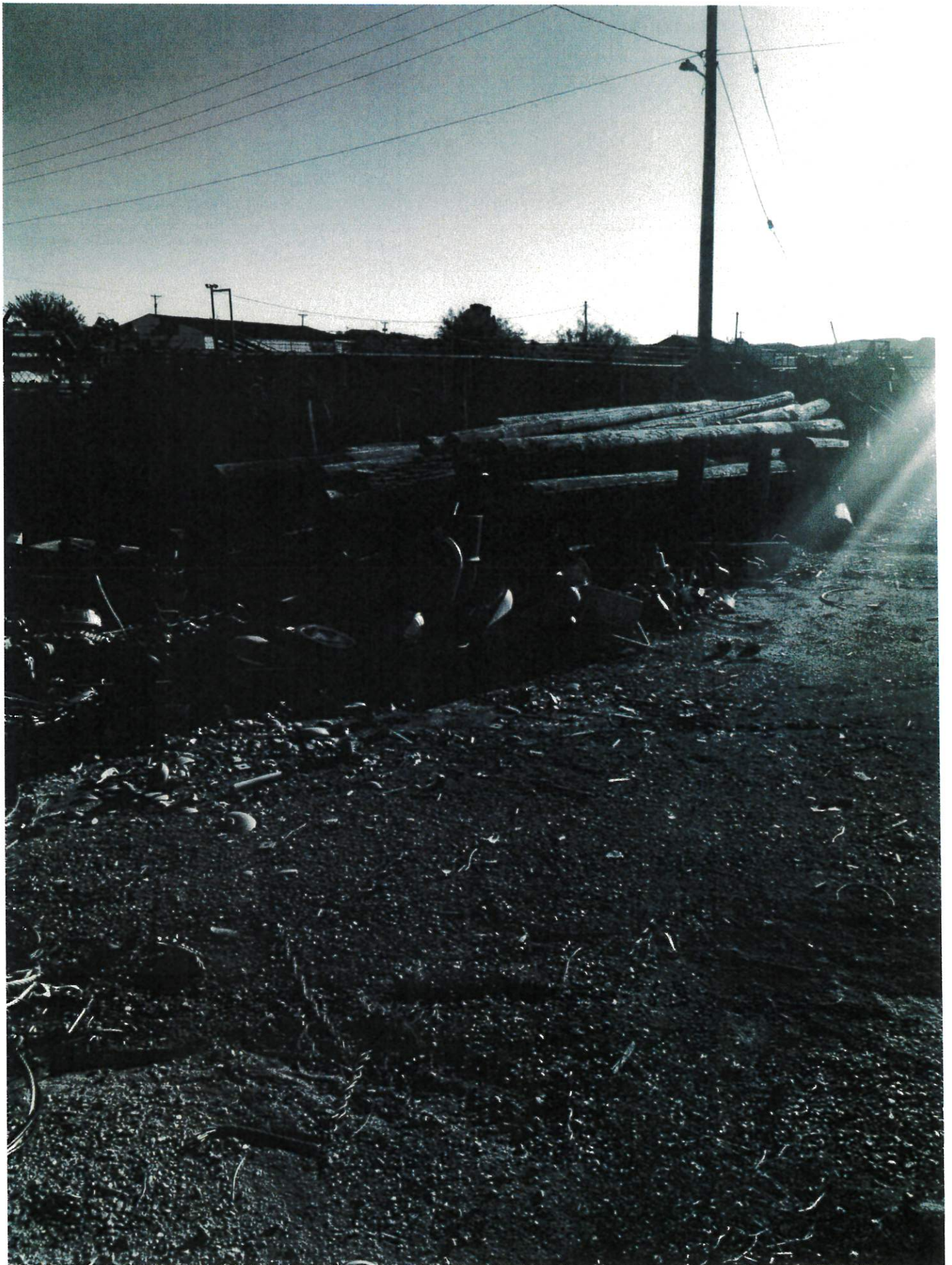
FINANCE DIRECTOR WILL WORK WITH CITY CLERK

Note: Property cannot be disposed of until approved by the Commission and by the Office of the State Auditor after 30 calendar days. Please check with the Finance Department.

Revised 5/19/21

Revised 12/17/20









PROPERTY DISPOSAL REQUEST FORM

PROPERTY ASSIGNED TO:

Date: January 10, 2023	Department: Utility Office
Department: Utility Office	Location: Utility Office
	Individual:
	Supervisor: Sonya Renfro

The following item(s) of controlled property need to be disposed of other than Departmental transfers:

	ITEM 1	ITEM 2	ITEM 3
Quantity: 1			
Tag Number:			
License # if any G-88439			
Brand/Model: Impala			
Description: 2013 Cheverolet Impala			
Serial/Vin #: 2G1WD5E3XD1236317			
Original Amount:			
Will This be Sold at Auction?			
Reason : No air/heat cannot use during cold/hot months and service center said they could not fix.			

Fill in all spaces where applicable & submit to the Finance Department within 5 working days.

(Attach additional sheets if more than 6 items)

RELEASE REQUESTED BY:

Sonya Renfro
Employee Signature

Utility Manager
Title

1/10/23
Date

Department Head Signature

Date

APPROVED:

City Manager Signature

Date

CITY MANAGER SIGNATURE ONLY
APPROVES PROCESS TO BEGIN;
SIGNATURE DOES NOT
AUTOMATICALLY APPROVE
DISPOSAL.
CONTACT FINANCE DIRECTOR

FINANCE DIRECTOR OR DESIGNEE

RESOLUTION #

Date entered into system: _____

COMMISSION MEETING DATE: _____

By: _____

This form is to be used for any inventory marked for disposal; must also accompany items set for auction.

Original to Finance Department. Copies to: Requestor, Department Head

FINANCE DIRECTOR WILL WORK WITH CITY CLERK

Note: Property cannot be disposed of until approved by the Commission and by the Office of the State Auditor after 30 calendar days. Please check with the Finance Department.



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.1

SUBJECT: Film Report and Film Liaison Appointment.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: October 18, 2024

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

WHO WILL PRESENT THE ITEM: Cary "Jagger" Gustin

Summary/Background:

Mr. Gustin has served as the City of Truth or Consequences Film Liaison for 29 years. He is requesting that the City Commission approve him to serve another two year term as our Film Liaison. He will also give a report on the recent A-24 Film Eddington.

Recommendation:

Consider re-appointment of Mr. Cary "Jagger" Gustin as the City of Truth or Consequences Film Liaison.

Attachments:

- Letter Request.

Fiscal Impact (Finance): No

-

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 10-23-24

Date: Oct 17, 2024

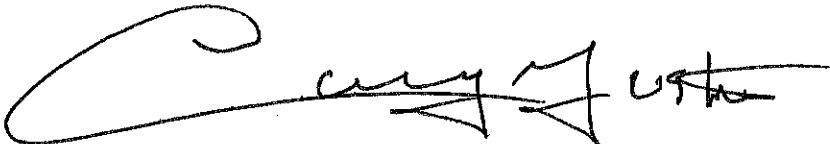
Honorable Mayor Rolf Hechler
City Hall 505 Sims Street
Truth or Consequences, NM 87901

RE: Film Report and Reappointment

Dear Mayor Hechler:

I am requesting approximately 10 minutes of your Agenda time
For your Commission meeting of: Oct 23, 2024 Allowing me
to give your Commission a film report on the recent A-24 Film
"Eddington" that worked here March, April and May 2024.
In addition I will request your Commission to reappoint me to the
next 2 year term for Film Liaison's to The New Mexico Film
Office as I wish to continue my service to the City of Truth or
Consequences in this regard.

Thank you in advance for your consideration of my request.

A handwritten signature in black ink, appearing to read "Cary 'Jagger' Gustin". The signature is stylized with a large, sweeping initial "C" and a long horizontal line extending to the right.

Sincerely Cary "Jagger" Gustin
Acting Film Liaison for the City of T or C to The
New Mexico Film Office

Film Report To: Tore City Commission Date: Oct 23, 2024
March 8th, 2024 wrapping on May 24th, 2024 Approx. 76 day shoot

Crew Spending: 155 people @ \$70 per day = 10,850 per day
X 76 days = \$824,600

30 vehicles Ford Passenger vans 12 with 30 gallon tanks filled
Say every 2 days 36 fill ups 12 vans X 36 = 432
423 X \$3.09 per gallon = \$1334.88

Hotel rooms are harder to estimate as the crew was spread out area wide: Downtown Historic District Properties, I-25 exit Properties
The old E B Resort Inn was rented entirely. Some of the top Talent stayed at Sierra Grande Lodge

--Our local Geronimo Springs Museum was paid \$27K for 3 days use of an outside courtyard.

1 building owner was paid \$25K monthly for 3 months \$75K

--If your business or shop was impacted you were compensated for lost sales.

--There were 8 separate location permits, that had to be reviewed and ok'd. Hats off to Angie Gonzales and Traci Alvarez, they helped me tremendously!!!!

--On March 20th, 2024 I had the honor of showing Tara Jaramillo From state government that days location shoot.

The rough estimate for funds spent locally is: 2 million, 234 thousand, 48 cents. Film crew and vehicle info is from

Ehrin Davis, Key Assistant Location Manager

--In June NMSU Board of regents in partnership with NM Economic Development Dept and NMSU's Arrow Head Center Announced plans to build a 36 thousand square foot sound Stage. This info is in your packet today. Soundstages are Large soundproof buildings used for sets or sets in series Productions that use the same location for extended periods.

I will now stand for questions and request that you appoint me for

The next 2 year term. 2024 will mark 31 years to serve the city as Liaison to the NM Film Office.

Eddington, That's A Wrap

By Steve Mull

For The SENTINEL

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It's been an exciting time for the city of Truth or Consequences, as the major motion picture "Eddington" has been filming in and around the downtown area.

Many businesses have been transformed to reflect the fictional setting of Sevilla County offices and retail locations. Road closures, heavy equipment,

lights and cameras have sporadically populated the streets. Protests and gunfire could be heard on occasion.

Now, as filming is concluding this week, residents can expect the area to return to the normal routines of small town living. Location Manager John Lucas says that principal photography should end Friday, May 24. "...unless things happen and we have to add a day."

(WRAP Continued On Page A4)



(SENTINEL Photo/Steve Mull)

WRAP---

(Continued From Page 1)

"Post-production will take time. The director and the editor

and all that good stuff. All that will definitely take some time."

"We will strategically pick a date to release the film. Sometimes the film will be done and

Fwd: NMSU Release: Planned soundstage announcement

1 message

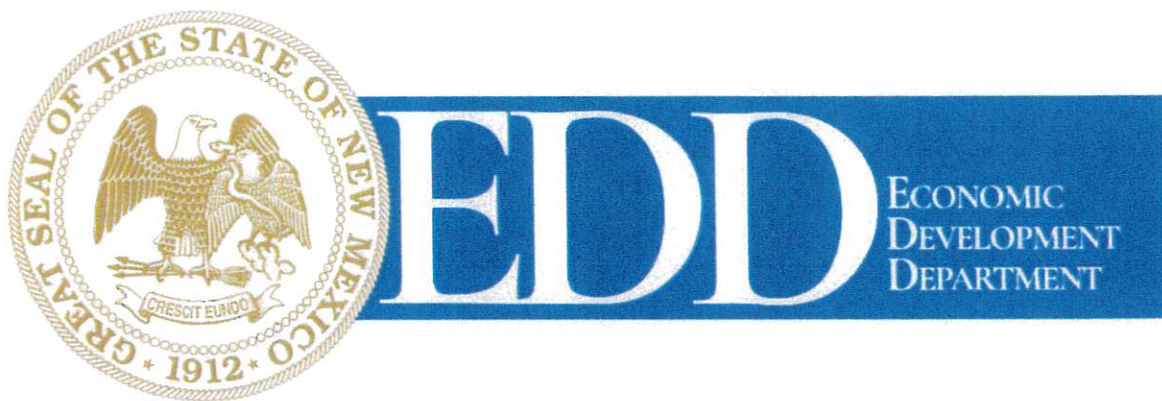
Tailor Man <tailorman53@yahoo.com>
To: copiesamj23@gmail.com

Mon, Sep 30, 2024 at 1:52 PM

Sent from my iPhone

Begin forwarded message:

From: New Mexico Economic Development Department <edd@newmexico.ccsend.com>
Date: August 7, 2024 at 4:36:45 PM MDT
To: tailorman53@yahoo.com
Subject: NMSU Release: Planned soundstage announcement
Reply-To: edd.info@state.nm.us



This is a reprinting of the [New Mexico State University press release](#) dated August 6, 2024.

NEWS RELEASE

Media Contact: Adriana M. Chávez
Senior Communications Specialist
adchavez@nmsu.edu
575-646-1957

WRITER: Adriana M. Chávez, 575-646-1957, adchavez@nmsu.edu
SOURCE: Wayne Savage, 575-646-2596, waynes@nmsu.edu

Reprinted by EDD on August 7, 2024

Planned soundstage at NMSU expected to significantly impact local, state economies

A planned \$15 million soundstage complex at New Mexico State University's Arrowhead Park is expected to attract film and television projects that will draw millions of dollars to the area and help

creative media students earn valuable experience.

In June, the NMSU Board of Regents unanimously approved an agreement between the New Mexico Economic Development Department (NMEDD), NMSU and Arrowhead Center Inc. to build the 36,400 square foot soundstage complex to be used for film and television productions. NMSU and DACC creative media students will also have opportunities for paid internships working on these productions, a key component of the project.

"This is a tremendous day for the film community in Las Cruces and southern New Mexico," said State Sen. Jeff Steinborn, president of Film Las Cruces and who led the effort to secure funding for the Las Cruces soundstage. "Creating a studio and soundstage in Las Cruces has long been a goal of Film Las Cruces and local filmmakers, and this new facility will add extremely valuable film production infrastructure to our region. Having been named by MovieMaker Magazine as a top city in America to live and work as a filmmaker, this is a significant step forward in Las Cruces ability to continue to support high quality film productions."

Soundstages are large, soundproofed buildings that provide an essential capability for films to create sets in sound- and lighting-controlled environments. They are commonly used for creating unique film sets, or sets in series productions that use the same filming location for extended time periods.

The project is funded by NMEDD as part of the statewide Media Arts Collective Initiative to grow the state's film industry. Once completed, NMSU will lease the soundstage to a company that will be responsible for operations and maintenance and will either film their own productions at the complex, or lease out the complex to other production companies, said Wayne Savage, executive director of Arrowhead Park.

The company operating the complex will be selected through a request for proposals process, or RFP, development of which has already begun. Savage said the hope is to have a company contracted by the time the complex is completed in January 2026.

"This soundstage complex at NMSU's Arrowhead Park is a game-changer for New Mexico's film industry," said Mateo Frazier, New Mexico Media Arts Collective acting executive director. "It bridges education and professional production, creating invaluable opportunities for our students while attracting major projects to southern New Mexico. This facility embodies our vision of a thriving film and media arts ecosystem that benefits our entire state. We're excited to work with NMSU, DACC, and our labor and industry partners to further establish New Mexico as a premier destination for film and television production."

Arrowhead Center Inc. will manage the development of the complex that will be located south of Doña Ana Community College's Creative Media Technology building at Arrowhead Park, and near the location of the proposed NMSU Creative Media Institute building. All three buildings will be among the components that form the Las Cruces Creative Campus envisioned by Kevin Boberg, Ph.D., Arrowhead Center's first director and CEO and former NMSU vice president for economic development who passed away in 2021.

"Dr. Boberg was a strong believer in this colocation idea to benefit students, research and industry," Savage said. "This will bring lots of opportunities for students when they graduate, as well as have a significant economic impact on the community."

Savage said the soundstage complex is expected to create 200 new, full-time jobs and help increase the local film crew base that regularly works on film and television productions in the area. The complex has the potential to attract a TV series that will spend between \$12 million to \$15 million over a six-month period for food, lodging and other services. A mid-sized film project has the potential to spend about \$4 million over two months.

"The soundstage will be a real game changer for southern New Mexico," said filmmaker Ross Marks, executive director of the Las Cruces International Film Festival and professor in NMSU's Creative Media Institute. "It will finally even the playing the field for us to attract film and television productions. It will

be a full-service stage with all the amenities needed to attract everything from big studio shows to small independent films. I personally look forward to using it for several of my future projects. I know our students will benefit from all the internship opportunities the new stage will provide.”

The agreement between NMSU, Arrowhead Center Inc. and NMEDD is for a total of 12 years, including the two-year development phase and a 10-year operations phase, after which NMSU can decide whether to continue with operation of the complex as a soundstage or convert it to serve other purposes.

Savage said the targeted groundbreaking date is sometime in the first quarter of 2025.

###

Photos and further information available on the original press release from the NMSU newsroom at <https://newsroom.nmsu.edu>.

EDD's mission is to improve the lives of New Mexico families by increasing economic opportunities and providing a place for businesses to thrive. EDD's programs contribute directly to this mission by training our workforce, providing infrastructure that supports business growth, and helping every community create a thriving economy.

New Mexico Economic Development Department
EDD.NewMexico.gov



New Mexico Economic Development Department | 1100 South St. Francis Dr Joseph M. Montoya
Building | Santa Fe, NM 87505-4147 US

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Film
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Mexico」

nmfilm.com

*Christopher Nolan at Ghost Ranch, New Mexico.
Melinda Sue Gordon/Universal Pictures*



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.2

SUBJECT: Discussion/Action: Approval of the Louis Armijo Sports Complex Master Plan

DEPARTMENT: Parks

DATE SUBMITTED: October 18, 2024

SUBMITTED BY: O.J. Hechler

WHO WILL PRESENT THE ITEM: O.J. Hechler, Community Service Director

Summary/Background: The City was awarded a Quality of Life Grant for a Master Plan of the Louis Armijo Sports Complex. There were two public meetings held for input and a presentation update was presented to the Commission. This is for final approval of the plan.

Recommendation:

Approve Master Plan

Attachments:

- Louis Armijo Sports Complex Final Master Plan Update

Fiscal Impact (Finance): N/A

\$0.00

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 10-23-2024

Louis Armijo Sports Complex Final Master Plan Update 3rd Commission Meeting



**TRUTH OR
CONSEQUENCES** NEW MEXICO

**WILSON
& COMPANY**



Project Scope and Goals

A. The Regional Recreation Centers Quality of Life Program Life Funding – funding is to improve the quality of life for New Mexico residents by creating new or expanding existing regional recreation facilities.

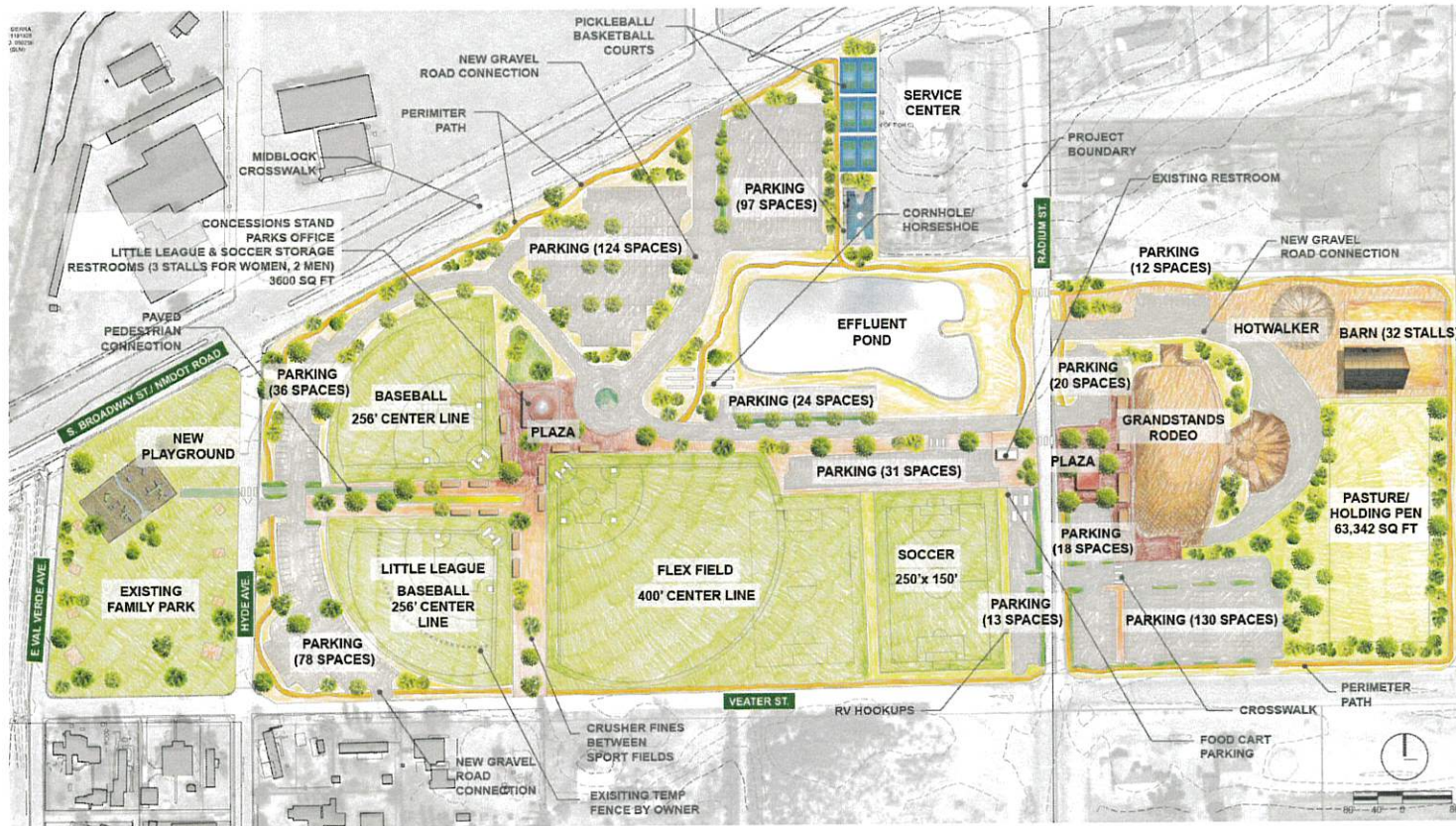
B. Master Plan scope is to evaluate the existing conditions of the Sport Complex and solicit public input regarding future use.

C. Vision & Goal is to enhance the complex and promote economic development. Once the Master Plan is complete this will be a planning tool for the City to continue to apply for funding opportunities.

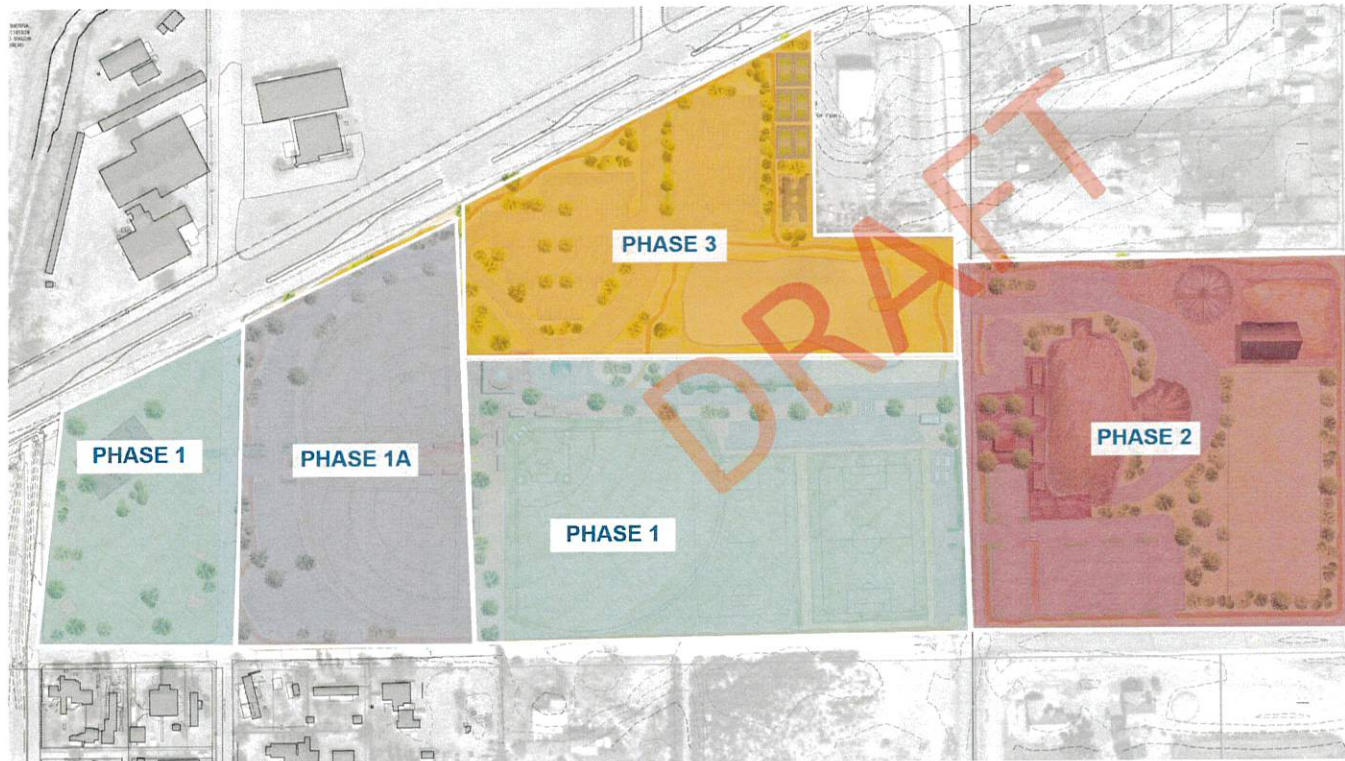
Previous Public Meetings - Comments

- Site Access: vehicular, pedestrian
- Improve parking
- Parking around fields for parents to pull up and watch from car (show on bottom two baseball fields)
- Formalize soccer fields
- Include a championship baseball field
- Flexible field space for baseball and soccer fields
- Include Perimeter Trail: walking
- Distinguish sport complex from rodeo
- Shade shelter near pickleball courts
- Include concessions with existing facilities/storage
- Include pond reclamation in future phasing

Final Master Plan Update



Final Master Plan Phasing



PHASE 1

- New Playground
- New Soccer Fields
- New Championship Baseball Field
- New Irrigation System
- Parking Improvements and road access
- Central Concessions Plaza

PHASE 1A

- Parking Improvements and road access
- Standard Baseball Fields
- Pedestrian Walkways

PHASE 2

- Rodeo Improvements

PHASE 3

- Parking Improvements and road access
- Pickleball/Basketball Courts
- Cornhole/Horseshoe
- Perimeter Walking Trail
- Pond Reclamation



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.3

SUBJECT: Discussion/Action: Summary Plat Amendment at 601 E. Third/217 N. Maple

DEPARTMENT: Community Development

DATE SUBMITTED: October 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

P & Z Commission recommended approval to the City Commission.

Recommendation:

Final Determination

Attachments:

- P & Z Agenda Packet
- Draft minutes applicable section highlighted

Fiscal Impact (Finance): Choose an item.

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 10-23-24



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 10-7-2024

ITEM:

Public Hearing/Discussion/Action: Summary Plat Amendment at 601 E. Third/217 N. Maple. The applicant wishes to divide the parcel as per Sec. 15-15 (Alternate Summary Procedure).

BACKGROUND:

Applicant is requesting to split parcel 302107841237. Parcel is in the C-1 District and currently has a business structure (601 E. 3rd) and a residential structure (217 N. Maple). Applicant would like to separate the business from the residential. Both proposed lots meet required lot size for C-1 District.

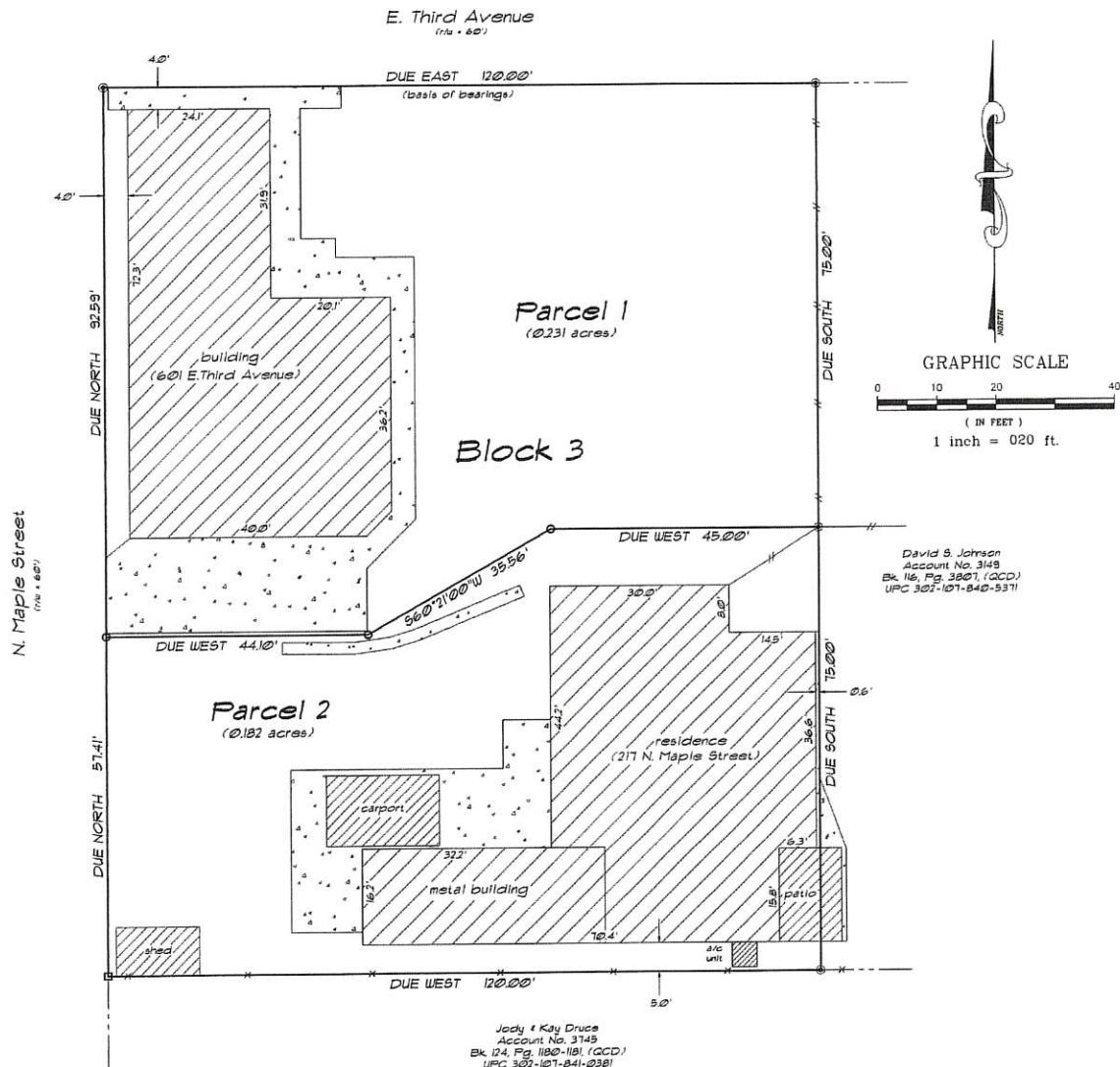
SUPPORT INFORMATION:

- Plat Survey
- Parcel Maps
- Public Hearing Notice
- Code Reference
- Findings of Facts Checklist

Name of Drafter: Traci Alvarez	: Assistant City Manager	
E-mail: talvarez@torcnm.org	Phone: 575-894-6673	

ALTERNATE SUMMARY PROCEDURE-SUMMARY PLAT

of the division of a 120' x 150' tract of land in the NW1/4 of Block 3,
into Parcel 1, (0.231 acres) and Parcel 2, (0.182 acres),
La Vista Addition to the Town of Hot Springs,
a subdivision in the City of Truth or Consequences, Sierra County, New Mexico



Reference:

Book 10, Page 2838-2839, (Warranty Deed)
Book 10, Page 2840-2841, (Warranty Deed)
Account No. 3521
UPC 302-107-841-2371
La Vista Addition to the Town of Hot Springs Subdivision Plat filed on January 27, 1929,
(Plat No. 19-B, Slide No. 51)
National Flood Insurance Program, Flood Insurance Rate Map for the City of Truth or
Consequences, Sierra County, New Mexico, Community-Panel No. 356013 0005 C, (map
revised: July 16, 1996)
City of Truth or Consequences Subdivision Codes, Ordinance Number 555, (adopted
May 23, 2006)

Notes:

These parcels are subject to easements, restrictions and reservations of record
The parcels shown herein are located within the boundaries of Flood Zone X,
"area determined to be outside 500-year flood plain"
The herein described parcels were created under the City of Truth or Consequences
Subdivision Codes, Ordinance Number 555, adopted May 23, 2006, (Chapter 13,
Section 13, Alternate Summary Procedure)
Use drawing scale to determine measurements when not labeled

August 16, 2024

ACKNOWLEDGMENT

I, the undersigned owner of the herein described property do hereby
acknowledge, with my free consent, and in accordance with my wishes and
desires, the division of land as shown on this plat.

Sheila N. Geibe
Sheila N. Geibe

STATE OF NEW MEXICO
COUNTY OF SIERRA

The foregoing instrument was acknowledged before me this 22nd day of

August 2024 by Sheila N. Geibe

Beverly T. Kasiah
Notary Public

My Commission Expires: 1-18-2025

BEVERLY T. KASIAH
NOTARY PUBLIC
STATE OF NEW MEXICO
COMMISSION # 1066680
COMMISSION EXPIRES: 01-18-2025

Legend:

Round 5/8" rebar w/survcap stamped "RLS 8473" @
pipe fence corner, (in concrete), w/brass washer stamped "RLS 8473" @
1/2" rebar w/survcap stamped "NPLS 1223" @
panel fence ————
wire fence ————

The City of Truth or Consequences does hereby acknowledge
the division of land as shown on this plat.

Mayor: _____ Date: _____

Chaparral Surveying, LLC
Professional Land Surveying

P.O. Box 675 Elephant Butte, New Mexico 87935

CERTIFICATE

This is to certify that I am a registered Professional
Land Surveyor, that this plat is prepared from notes
of field surveys made by me or under my supervision,
that said surveys and this plat are true and correct
to the best of my knowledge and belief.
I further certify that this survey is an Alternate Summary
Procedure of an existing tract or tracts.

This plat meets the minimum requirements of the
Standards of Land Surveys in New Mexico.

David H. Sam
David H. Sam
New Mexico Professional Surveyor
License Number 12029

INDEXING INFORMATION FOR COUNTY CLERK
Sheila N. Geibe (3521)
La Vista Addition
Section 34, Tshp. 13 South, Rge. 4 West

Chaparral Surveying, LLC

P.O. Box 629

Elephant Butte, New Mexico 87935

(575) 740-0334

August 19, 2024

LEGAL DESCRIPTION-PARCEL 1

(0.231 ACRES)

A parcel of land situate in Section 34, Township 13 South, Range 4 West, N.M.P.M., within the NW¼ of Block 3, La Vista Addition to the Town of Hot Springs, in the City of Truth or Consequences, Sierra County, New Mexico, and more particularly described as follows, to-wit;

Beginning at the NW corner of this parcel, a 5/8" rebar w/survcap stamped "RLS 8473", a point at the intersection of N. Maple Street and E. Third Avenue, said corner being the NW corner of Block 3, La Vista Addition;

Thence, continuing along E. Third Avenue, DUE EAST, a distance of 120.00 feet to the NE corner of this parcel, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, DUE SOUTH, a distance of 75.00 feet to the SE corner of this parcel, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, DUE WEST, a distance of 45.00 feet to an angle point in this parcel, a ½" rebar w/survcap stamped "NMPLS 12129";

Thence, S60°21'00"W, a distance of 35.56 feet to an angle point in this parcel, a ½" rebar w/survcap stamped "NMPLS 12129";

Thence, DUE WEST, a distance of 44.10 feet to the SW corner of this parcel, a ½" rebar w/survcap stamped "NMPLS 12129", a point on N. Maple Street;

Thence, continuing along N. Maple Street, DUE NORTH, a distance of 92.59 feet to the point of beginning of the parcel hereon described, containing 0.231 acres of land, more or less.

This legal description was prepared from a field survey by David M. Senn, NMPLS 12129, (re: Chaparral Surveying, LLC, Summary Plat dated August 16, 2024).

Chaparral Surveying, LLC

P.O. Box 629

Elephant Butte, New Mexico 87935

(575) 740-0334

August 19, 2024

LEGAL DESCRIPTION-PARCEL 2

(0.182 ACRES)

A parcel of land situate in Section 34, Township 13 South, Range 4 West, N.M.P.M., within the NW¼ of Block 3, La Vista Addition to the Town of Hot Springs, in the City of Truth or Consequences, Sierra County, New Mexico, and more particularly described as follows, to-wit;

Beginning at the NW corner of this parcel, a ½" rebar w/survcap stamped "NMPLS 12129", a point on N. Maple Street, whence the NW corner of Block 3, La Vista Addition bears DUE NORTH, a distance of 92.59 feet;

Thence, DUE EAST, a distance of 44.10 feet to an angle point in this parcel, a ½" rebar w/survcap stamped "NMPLS 12129";

Thence, N60°21'00"E, a distance of 35.56 feet to an angle point in this parcel, a ½" rebar w/survcap stamped "NMPLS 12129";

Thence, DUE EAST, a distance of 45.00 feet to the NE corner of this parcel, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, DUE SOUTH, a distance of 75.00 feet to the SE corner of this parcel, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, DUE WEST, a distance of 120.00 feet to the SW corner of this parcel a pipe fence corner, (in concrete), w/brass washer stamped "RLS 8473", a point on N. Maple Street;

Thence, continuing along N. Maple Street, DUE NORTH, a distance of 57.41 feet to the point of beginning of the parcel hereon described, containing 0.182 acres of land, more or less.

This legal description was prepared from a field survey by David M. Senn, NMPLS 12129, (re: Chaparral Surveying, LLC, Summary Plat dated August 16, 2024).



North



Find address or place

Laundromat
on Third

U-Haul

The Shipping
Corner

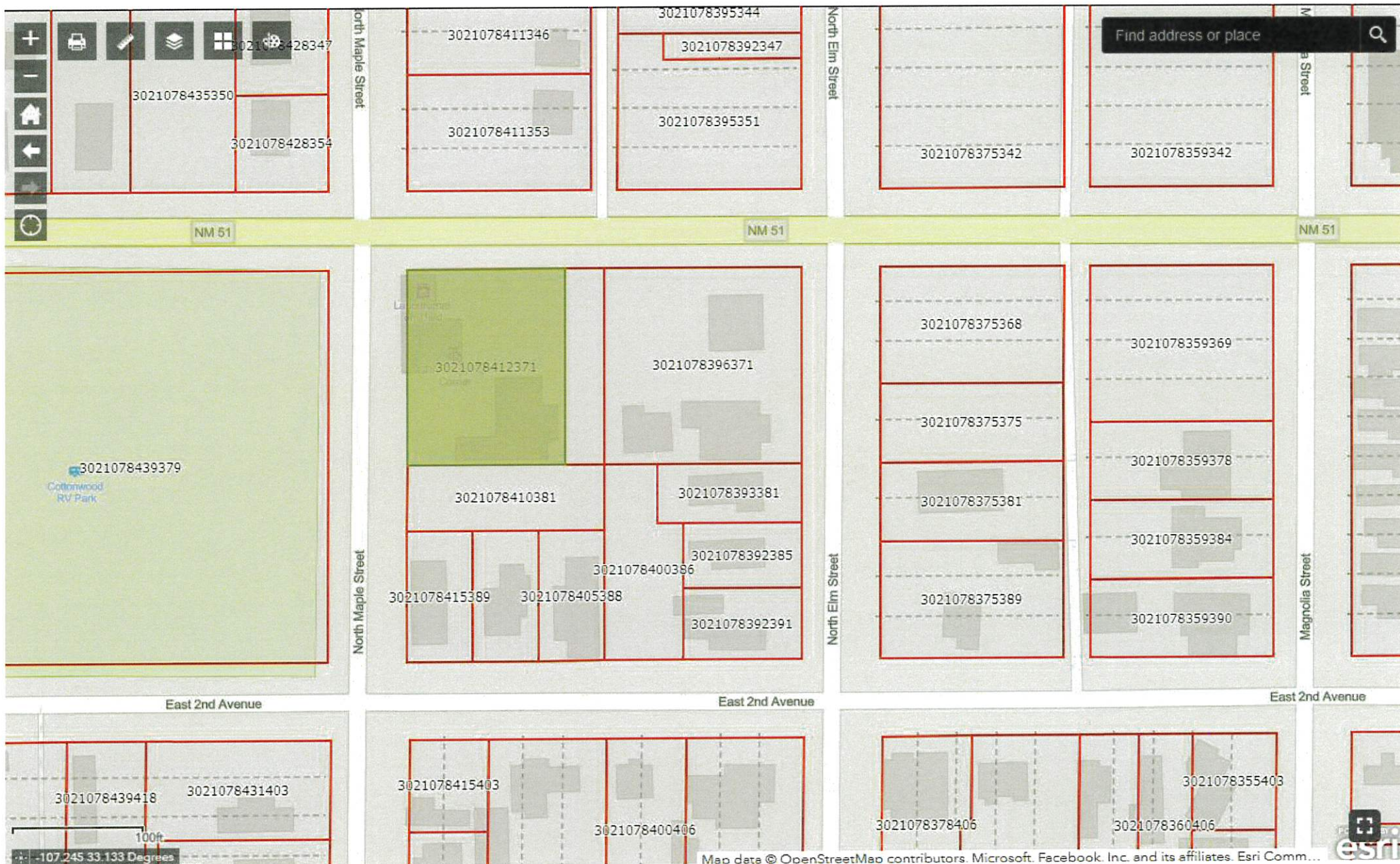
The Shipping
Corner

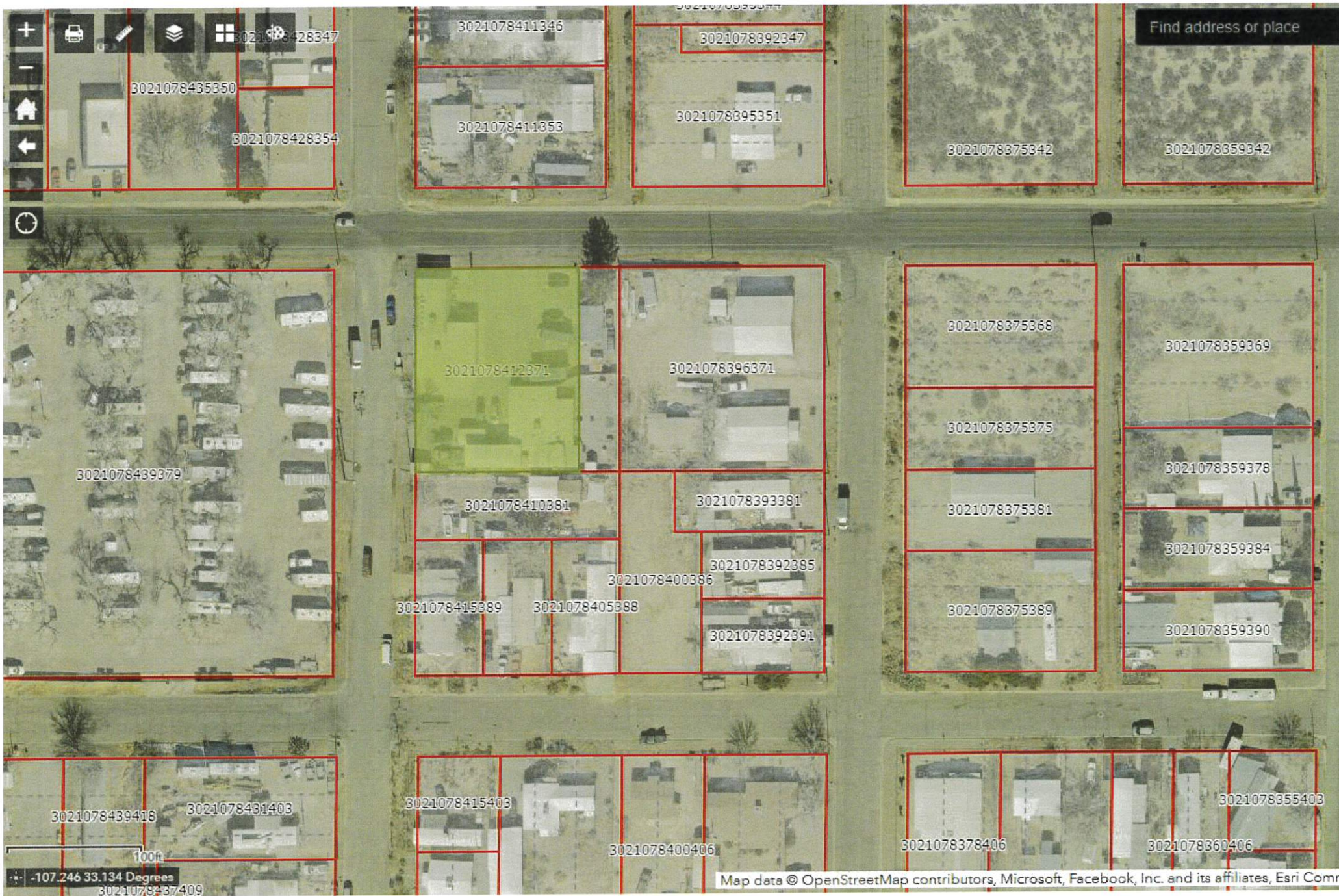
3021078412371

3021078405371

North Maple Street

20ft





Rolf Hechler
Mayor

Amanda Forrister
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



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

Destiny Mitchell
Commissioner

Ingo Hoepfner
Commissioner

Angie Gonzales
City Manager

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City of Truth or Consequences Planning & Zoning Commission will hold a Public Hearing during their regular scheduled meeting on Monday, October 7, 2024, to receive input regarding the following:

Public Hearing/Discussion/Action: Summary Plat Amendment at 601 E. Third/217 N. Maple. The applicant wishes to divide the parcel as per Sec. 15-15 (Alternate Summary Procedure).

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

Should you have any questions regarding this Public Hearing, please contact Traci Alvarez at (575) 941-0565 or by email at talvarez@torcnm.org.

The agenda may be obtained on Friday, October 4, 2024, on the city website calendar at www.torcnm.org; by contacting the City Clerk's Office at 575-894-6673; or by email to: torcclerk@torcnm.org.

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

Publish on the following date:

- Sentinel– Thursday, September 19, 2024

Sec. 11-9-7. C-1 General Commercial District.

- A. **PURPOSE.** The intent of the C-1 District is to provide for certain commercial/retail uses which serve both transient and local trade. The District is intended for areas surrounding major arterial or collector streets where a wide range of automobile-related service facilities, convenience goods and personal services are desirable and appropriate as a land use.
- B. **DEVELOPMENT STANDARDS.** Development standards and other requirements are provided in Articles X through XIV of this Code.
- C. **C-1 PERMITTED USES.**

• Accountant Office	• Arts and Crafts Studio
• Advertising Services	• Auditoriums
• Animal Hospital and Clinic	• Automobile Parking Lot
• Auto and Camper Sales, Service and Rental	• Gasoline Pumps
• Automotive Equipment	• Gasoline Stations
• Bakery	• Gift Shop
• Banking and Financial Institution	• Glass Cutting and Finishing
• Barber Shop and Beauty Parlor	• Golf Course
• Bathhouse or Spa	• Grocery Store
• Bicycle Sales and Service	• Gymnasium
• Boat and RV Storage	• Hardware Store
• Bookstores and Stationery Shops	• Heavy Equipment Sales
• Building and Other Construction-Contractor: office only	• Hobby Shop
• Business Service Establishment	• Hospital or Overnight Clinic
• Butcher Shop and Meat Sales	• Hotel and Motel
• Catering	• Household Appliance Sales and Service and Repair
• Cigarette and Cigar Shop	• Insurance Services
• Clinic	• Institutions, Public and Quasi-Public
• Clothing Store and Apparel Shop	• Jewelry Store
• Coffee Shop	• Kennel, Commercial
• Columbarium	• Laboratory (medical, dental or engineering)
• Community Center or Public Office Building	• Liquor Store - Taverns and Package Stores
• Convenience Store	• Pet Shop or Grooming Parlor
• Convention or Exhibition Hall	• Photographic Studio and Supply Store
• Country Club	• Plant Nursery
• Dance Hall or Music Academy	• Plumbing and Heating Shop
• Dentist Office	• Pool and Billiard Room
• Department Store	• Post Office
• Dressmaking Shop	• Private Club or Lounge
• Drugstore	• Public Park, Playground and Recreational
• Dry-cleaning and Steam cleaning Establishment	• Radio, Television Broadcasting Studios, Music Store
• Electrical Shop and Electricians	• Real Estate Services
• Farm Machinery	• Restaurant
• Farm and Ranch Products and Supplies	• Retail Sales
• Fast Food Sales including Drive-In Sales	• Roofing and Sheet Metal Shop

• Firewood Sales	• Shoe Repair
• Florist Shop	• Show and Sales Room for Business Products
• Food Store	• Skating Rink
• Frozen Food Locker	• Sporting Goods Store
• Funeral Home, Mortuary (including crematorium)	• Tailoring
• Furniture and Home Furnishings	• Taverns and Cocktail Lounges
• Taxicab Transportation	• Travel Agency
• Telephone Exchange Station	• Upholstery
• Telegraph and Messenger Service	• Variety Store
• Tire Sales and Service	• Warehousing and Storage
• Title and Abstracting Services	• Watch and Clock Sales and Service

D. **PERMITTED USES—WITH CONDITIONS.** The following C-1 uses are permitted in accordance with stated conditions and upon approval by the Planning and Zoning Commission.

1. **Adult Entertainment Uses:** Uses such as adult bookstores, adult movie theaters, and adult news racks, as defined in Article 8 of this Code, shall be permitted provided such use is located a minimum of three hundred (300) feet from a property line of any:
 - a. School;
 - b. Church;
 - c. Public park or recreational facility;
 - d. Residential District;
 - e. Another adult entertainment facility.

There shall be no public display visible outside of the building. In addition, display of adult pictures of other materials within a grocery store, bookstore, or other retail or wholesale store shall be concealed from public view.

2. **Amusement Park or Enterprise:** Subject to any other provisions and requirements of the Municipal Code. Temporary amusement enterprises are prohibited within three hundred (300) feet of any residential zoning District. Permanent amusement enterprises are prohibited within five hundred (500) feet of any residential zoning District.
3. **Automobile Body and Repair Shop:** Not permitted within one hundred (100) feet of any residential District.
4. **Bank Drive-up Windows:** Stacking lane(s) of one hundred eighty (180) feet by ten (10) feet for each drive-up must be provided and designed to insure that no bank traffic backs onto the street giving access. Banks must be located on a collector or arterial streets as shown on the City Street Plan.
5. **Bowling Alley:** Subject to approval of site and related plans. Bowling alleys are prohibited within three hundred (300) feet of any residential zoning District.
6. **Bus or Motor Freight Terminal:** Only when located on an arterial street as designated on the City Street Plan.
7. **Car Washes:** There shall be no run-off onto neighboring properties or streets resulting from the use. Any discharge into public liquid waste disposal systems shall be approved by the administrator of the system prior to approval of the business. If the subject property is not served by a public waste disposal system, approval from the New Mexico Environmental Department shall be required.

-
8. Child Care Center, Nursery or Similar Use: Play areas shall be in accord with State licensing requirements and enclosed by a solid wall or fence five (5) feet in height.
 9. Christmas Tree Sales: Temporary, not prior to November 15, provided lots are cleaned and removed by December 31.
 10. Church: Only when located on an arterial or collector street as designated on the City Street Plan.
 11. Construction or Contractor's Yard: Yard shall be maintained in a neat and orderly fashion and enclosed by a fence at least six (6) feet in height except that the height shall be limited to three (3) feet above street curb within a clear site triangle as defined in this Code.
 12. Drive-In Theater: Subject to approval of site and related plans.
 13. Firewood Sales: No more than twenty (20) cords stored on site.
 14. Flea Market: Subject to any other requirements of the Municipal Code.
 15. Furniture Assembly (Accessory Use): Permitted only as an incidental or accessory use to retail sales. Maximum floor area for assembly shall not exceed three thousand (3,000) square feet, not exceed thirty percent (30%) of the total business floor area, and shall be within the same building.
 16. Gas Pressure Control Stations: (Public or Private Utility.)
 17. Heavy Equipment Repair (Accessory Use): Permitted only as an incidental or accessory use to heavy equipment sales. Floor area for repair shall not exceed three thousand (3,000) square feet and not exceed thirty percent (30%) of the total gross floor area. Welding is permitted only in conjunction with repair and shall not be used for the purpose of heavy equipment assembly.
 18. Miniature Golf Course: Subject to approval of site and related plans. Not permitted within one hundred (100) feet of any residential District.
 19. Mini Storage Units: Units shall not be used for commercial sales of products, merchandise, service or repair. (This does not preclude a business from using storage units solely for storage of commercial or business related items provide that the actual commercial operation or business is conducted elsewhere, and there is no external evidence of the business at the storage unit.)
 20. School, Public, Private or Trade: Sites shall be located on an arterial or collector street as shown on the City Street Plan.
 21. Shopping Center: Providing site, drainage, and related plans for the entire development are approved.
 22. Storage of Wrecked or Dismantled Vehicles and Parts (Accessory Use): The storage of wrecked and dismantled vehicles and parts thereof shall be permitted only as an incidental accessory use to a vehicle repair establishment or a body shop:
 - a. Storage shall be within an enclosed building or within a sight-obscuring fence at least six (6) feet in height;
 - b. Vehicles and parts stored at the exterior of the building shall be owned by customers of the business and such storage shall be only for the purpose of repair and return to customer;
 - c. Exterior storage of vehicles shall not remain on the premises for a period exceeding three (3) months;
 - d. A maximum of five (5) wrecked vehicles may be stored at the building exterior during any one time;
 - e. Exterior storage shall be a minimum of one hundred (100) feet from a residential District.

-
23. Swimming Pools: Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line, and approval from all utilities is required to insure overhead safety.
 24. Television and Radio Towers and all Other Free Standing Towers (Public and Private Uses): Towers shall have manufacturer's specifications to withstand a 75 mph wind and shall be constructed to meet New Mexico Building Code standards.
 25. Welding (Accessory Use): Welding shall be permitted only as an incidental or accessory use necessary for the repair of vehicles or equipment permitted in the C-1 District. Welding uses shall be approved by the Fire Department and shall be in accord with any other provisions of the Municipal Code.
 26. Wrecker Service: In accord with storage of wrecked vehicle provisions of Item D.22 of this Section.
- E. *SPECIAL USES FOR C-1 DISTRICT.* The following uses require approval of the City Commission. Specific conditions and provisions for special use may be referred to in Article V.
1. Dwelling Unit: Special Use Permits are required for dwellings within the C-1 District upon lots or other parcels located directly adjacent to Broadway Avenue, Main Street or Date Street. Dwellings elsewhere within the C-1 District are permitted by right. Manufactured Homes (MH's) are permitted within the C-1 District subject to the provisions stated herein and in Articles 11 and 14.
 2. Apartments ten (10) unit minimum)
 3. Concrete Sales and Ready Mix
 4. Correctional Facilities and Institutions
 5. Heavy Equipment Repair and Service
 6. Kennel (Commercial)
 7. Manufactured Home Park or Subdivision: Subject to the provisions of Articles 11 and 14.
 8. Propane or Liquefied Petroleum Gas Distribution Point: Up to two thousand (2,000) gallons, not be located within three hundred thirty (330) feet of any residential zoning district, or within the area bounded by Date, Main and Austin Streets.
 9. Racetrack
 10. Residential Vehicle Park
 11. Recycle Purchase Center
 12. Stadium: Baseball, Football, Soccer or Track.
 13. Townhouses (R-2 Development Standards apply)
 14. Welding Shop

Sec. 11-14-2. Standards For Districts.

District	Lots: Minimum Front Setback	Yards: Minimum Rear Setback	Yards: Minimum Side Setback
R-1	25'	25'	8'
R-1	25'	20'	6' or 0'*
R-3	20'	15'	5' or 0'*
R-4	25'	25'	5'
RR-1	25'	15'	5'
C-1	20'	15'	5' or 0'*
M-1	25'	25'	5' or 0'*
T-1	25'	25'	15'

* As permissible per Section 11-14-3 and 11-14-4.

District	Lots: Minimum Area	Lots: Minimum Width	Dwelling: Minimum Area	Maximum Height
R-1	9,000 s. f.	60'	1,200 s. f.	26'
R-2: Single-Family	5,000 s. f.	60'	900 s. f.	26'
R-2: Two-Family	4,000 s. f./unit	60'	650 s. f./unit	35'
R-2: Multiple-Family	3,500 s. f./unit	60'	600 s. f./unit	35'
R-2: Apartments	3,500 s. f./unit	60'	500 s. f./unit	35'
R-2: MH*	5,000 s. f.	60'	900 s. f.	26'
R-3: Single-Family	4,500 s. f.	45'	700 s. f.	35'
R-3: Two-Family	3,000 s. f./unit	45'	500 s. f./unit	35'
R-3: Multiple-Family	3,000 s. f./unit	45'	450 s. f./unit	35'
R-3: Apartments	2,000 s. f./unit	45'	400 s. f./unit	35'
R-3: MH*	4,500	45'	550 s. f.	26'
R-4	1 acre	75'	1,200 s. f.	26'
RR-1	5,000 s. f.	50'	800 s. f.	26'
C-1	5,000 s. f.	60'	" "	35'
C-1: MH*	4,000 s. f.	45'	550 s. f.	26'
M-1	" "	60'	" "	35'
T-1	21,780 s. f.	100'	800 s. f.	35'
T-1: MH*	21,780 s. f.	60'	550 s. f.	26'

* Not located within MHP

Sec. 11-14-4. Commercial and Manufacturing Districts: Additional Provisions and Exceptions.

The following provisions shall apply to all development in a commercial or manufacturing Districts:

A. *SETBACK EXCEPTION.*

1. A zero (0) foot side yard shall be permitted only when:
 - a. A building on the abutting side is at least five (5) feet from the property line; or
 - b. Both buildings share a common wall on the side property line; or
 - c. When the abutting property is undeveloped. Otherwise, a five (5) foot setback is required.
2. There shall be a minimum setback of one (1) foot for each foot in height of any building abutting a residential District. There shall be at least a minimum distance of thirty (30) feet maintained between any residential dwelling and any commercial or industrial structure.

B. *MINIMUM DISTANCE BETWEEN STRUCTURES.* There shall be no less than ten (10) feet between buildings or structures located on the same lot, tract, or parcel.

C. *PRIVATE STREETS.* All non-dedicated streets or private drives shall be a minimum of twenty-four (24) feet in width.

Sec. 15-15. - Alternate summary procedure.

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

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

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

C. *Elective pre-application procedure:*

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

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

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

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

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

E. *Submittal and review procedures:*

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

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

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

PLANNING AND ZONING COMMISSION

FINDINGS OF FACTS CHECKLIST

Request Date _____ Address _____

Findings of facts for recommendations and decisions.

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

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

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

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

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES
MONDAY, OCTOBER 7, 2024**

REGULAR MEETING

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, October 7, 2024, at 4:00 p.m.

INTRODUCTION:

ROLL CALL:

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

ALSO PRESENT:

Traci Alvarez, Assistant City Manager
Katy Martinez, Deputy City Clerk

1. APPROVAL OF AGENDA:

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

2. APPROVAL OF MINUTES:

a) September 9, 2024.

Member Luchini made a motion to approve the minutes. Member Kent seconded the motion. Motion carried unanimously.

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

There were no comments from the public.

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

4. PUBLIC HEARINGS (5 Minute Rule Applies)

- a) Public Hearing/Discussion/Action: Summary Plat Amendment at 601 E. Third/217 N. Maple. The applicant wishes to divide the parcel as per Sec. 15-15 (Alternate Summary Procedure).

Assistant City Manager Alvarez: Applicant is requesting to split this parcel. The parcel is located in the C1 District, and it currently has a business structure on it as well as a residential structure. He would like to separate the business from the residential. Both lots meet the required lot size for the C1 District no concerns with electric utility, water utility can be provided a separate tap to both areas. I did have a question on the sewer we weren't sure where the sewer ran. Are they connected?

Jason Hopp Applicant: No, they are separate. The 217 goes out to the east side and the 601 goes out on the north end.

Assistant City Manager Alvarez: So, the sewer line doesn't cross. So, there is no issues or concerns with utilities and the applicant is here.

Chairman Sisney opened the public hearing.

Chairman Sisney: Is there and issue with the water supply?

Jason Hopp Applicant: No.

Assistant City Manager Alvarez: Both lots have unobstructed access to water, sewer, electric and streets. I have attached your seven findings of facts to review for your decision-making purposes.

Proponents:

No Proponents

Opponents:

No Opponents

Chairman Sisney closed the public hearing.

Chairman Sisney made a motion to recommend approval to the City Commission for a Summary Plat Amendment at 601 E. Third/217 N. Maple. Vice Chairman Buhler seconded the motion. Roll call vote was taken. Motion carried unanimously.

b) Public Hearing/Discussion/Action: Vacation of Plats to Vacate a 20' alley situated in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace as per Sec. 15-18 (Vacation of Plats)

Assistant City Manager Alvarez: If you turn to the fourth page in your packet this will probably be the easiest thing to look at for explanation. The applicant owns the property and the parcels as well. They are requesting to vacate the section of what is designated as an alley between the properties. This is silver street up by the hospital area. As you know from that it wouldn't be a very well-developed area. If you look at the second map on the next page you will see that the alley way ends at the end of their parcels. What they are requesting is that the city vacate that alley. The alley way would then be split between those various parcels for potential future development. The applicants are present. There is no service up there at this time they are looking at potentially developing it so it would be their responsibility to pay for water, sewer and electric services to go there. There are areas that those utilities could be provided but vacating this alley does not interfere with any services.

Chairman Sisney opened the public hearing.

Daniel Steel Applicant: Everything Traci said covers it. The 20-foot alley when they build houses on 9th street that block that alley off on 9th street then Madeline is a 60 foot right of way on the north side as you can see and that's where it ends and then it's a huge hole there right next to the helipad. I don't see it affecting anything in a negative way. We want to build one home up there, that is our plan. We are not developing this property.

Member Kent: you want to bring this all together into one?

Daniel Steel Applicant: Yes, its four tax ids with the county four different parcels.

Assistant City Manager Alvarez: He is not required to combine the parcels. If he wants to build the only difference in that requirement is if he doesn't combine the parcels when he goes to build is that his building has to meet the required setbacks of whatever parcel it sits on. He feels that could potentially be doable and if not, we will see him again when he combines the parcels.

Daniel Steel Applicant: That is what we will do is we will build one parcel. The view is great so. Most of that property is hill side. We met with the county assessor. We were going to originally ask to vacate half of Madeline also but he advised against that so that is why we are doing the 20-foot alley.

Proponents:

No Proponents

Opponents:

No Opponents

Chairman Sisney closed the public hearing.

Chairman Sisney made a motion to recommend approval to the City Commission for a Vacation of Plats to Vacate a 20' alley situated in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace as per Sec. 15-18 (Vacation of Plats). Vice Chairman Buhler seconded the motion. Roll call vote was taken. Motion carried unanimously.

5. NEW BUSINESS:

- a) Discussion/Action: Recommendation for the re-appointment of Board Member Chris Sisney.

Vice-Chairman Buhler made a motion to recommend to the City Commission the re-appointment of Chris Sisney to serve as a member on the board. Member Kent seconded the motion. Motion carried unanimously.

- b) Discussion/Action: Recommendation for the re-appointment of Board Member Esther Luchini.

Chairman Sisney made a motion to recommend to the City Commission the re-appointment of Chris Sisney to serve as a member on the board. Member Kent seconded the motion. Motion carried unanimously.

- c) Discussion/Action: Recommendation for the re-appointment of Board Member Susan Buhler.

Chairman Sisney made a motion to recommend to the City Commission the re-appointment of Chris Sisney to serve as a member on the board. Member Luchini seconded the motion. Motion carried unanimously.

5. REPORTS FROM THE BOARD:

Member Kent: We haven't talked about trying to discuss short term rental guidelines. Now that im back if we want to move forward with that.

Assistant City Manager Alvarez: Request that they city clerks' office put it on your agenda as a discussion/update for the first meeting and then you guys bring all of your information or discussion workshop even and bring all your research and our municipal code and where your concerns and changes would be and kind of hash it out. I know when we have gone to the utility board when revising something sometimes it will take 2 to 4 meetings for them to all

hash it out and come up with a draft that they want presented to the city commission. Start with the first one and see where you go from there.

Member Kent: Are you suggesting for the next meeting to bring and research or ideas that we may.

Assistant City Manager Alvarez: I would recommend that after you have a good discussion as a board and maybe come up with some ideas then you have one of your meetings scheduled as a public workshop and you don't have to wait for your next scheduled meeting you can make a decision and they can put it on the agenda for you guys to make a decision about a potential special meeting and meet sooner than a month later.

6. REPORTS FROM STAFF:

Assistant City Manager Alvarez: Just to keep you guys aware of where code is going at this time we have encountered some delays and hurdles in the Magistrate court so our Code Enforcement Officer Tyler went to the planning and zoning conference and got some really good ideas on how Edgewood is handling their system and it looks like it could potentially streamline our system a little bit. You may hear about or see some information coming to you guys potentially at the next meeting or the meeting after for an update that would help us not have to take some of these cases through court. Unfortunately, I don't know if it's because Magistrate is busy or if it's just the idea behind the judges, but they don't want to hear or deal with code enforcement violations. We will keep you posted as we move forward. It will involve changing our ordinances, but they have some great ideas. I believe they are planning on if you are able to go to the city commission meeting on Wednesday they are having a really good presentation. Either look at the agenda packet after the meeting I don't think the presentation is in the actual meeting packet yet. He will do the presentation and then it will be available or if you are able to come to the meeting that would be great. Wednesday the 9th at 9am.

Member Luchini: Which issues go to Magistrate Court?

Assistant City Manager Alvarez: All of our municipal code violations go to Magistrate. We have no Municipal Court, so everything goes straight to magistrate. In the past anything that was a city ordinance and not a state law or municipal court was the one that heard, and we had struggles there as well. They deal with some but code enforcement violations they just aren't really interested in hearing and taking a long time to get through to process so it gets frustrating on our side because you submit something and then you're waiting 30 to 60 days before you get a trial date and then sometimes it gets suspended for certain days or dismissed. Unfortunately, we are not the only municipality encountering that. That is why Edgewood moved a whole new process they have been really successful. It's been so successful that

Albuquerque and Santa Fe have even taken on some of the process that Edgewood is doing and so that is what Tyler is presenting on Wednesday.

7. ADJOURNMENT:

Chairman Sisney adjourned the meeting at 4:20 p.m.

PASSED AND APPROVED ON THIS 4th DAY OF NOVEMBER, 2024.

Chris Sisney, Chairman
Planning & Zoning Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.4

SUBJECT: Discussion/Action: Vacation of Plats to Vacate a 20' alley situated in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace as per Sec. 15-18 (Vacation of Plats)

DEPARTMENT: Community Development

DATE SUBMITTED: October 18, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

P & Z Commission recommended approval to the City Commission.

Recommendation:

Final Determination

Attachments:

- P & Z Agenda Packet
- Draft minutes applicable section highlighted

Fiscal Impact (Finance): Choose an item.

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 10-23-24



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 10-7-2024

ITEM:

Public Hearing/Discussion/Action: Vacation of Plats to Vacate a 20' alley situated in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace as per Sec. 15-18 (Vacation of Plats)

BACKGROUND:

Applicant requests the city vacate the alley located between his parcels – 3021078294114, 3021078277107, 302107827717, 3021078279124.

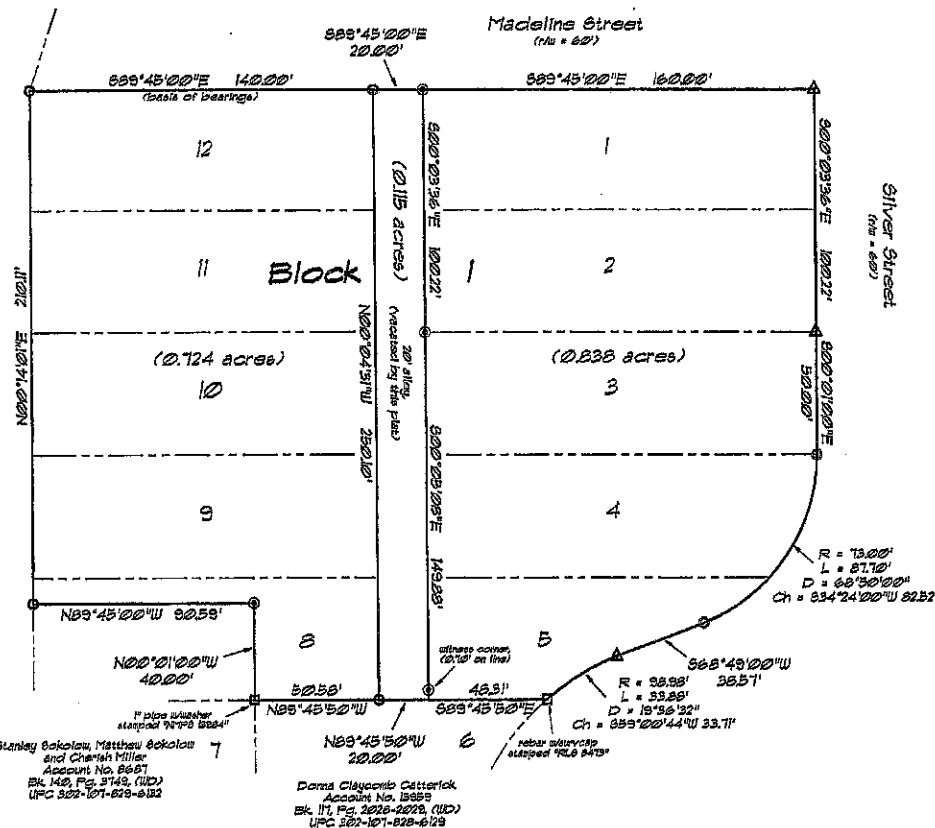
SUPPORT INFORMATION:

- Plat Survey
- Parcel Maps
- Public Hearing Notice
- Code Reference
- Findings of Facts Checklist

Name of Drafter: Traci Alvarez	: Assistant City Manager	
E-mail: talvarez@torcnm.org	Phone: 575-894-6673	

BOUNDARY SURVEY PLAT

of all of Lots 1 thru 5, 9 thru 12, a portion of Lot 8 and the 20' alley in-between, Block 1, Smith Terrace,
a subdivision in the City of Truth or Consequences, Sierra County, New Mexico



Notes:

These lots are subject to easements, restrictions and reservations of record

The lots shown hereon are located within the boundaries of Flood Zone X, "area determined to be outside the 500-year flood plain"

Use drawing scale to determine measurements when not labeled

On corners found without survey identification, an aluminum tag stamped "NMP-6 1225" was applied

Reference:

Account No. 4137
Book 143, Page 3471, (Warranty Deed)
UFG 302-107-827-1111, 302-107-828-414 & 302-107-827-3124

Account No. 50205
Book 143, Page 3471, (Warranty Deed)
UFG 302-107-827-1107

Smith Terrace Subdivision Plat filed for record on May 23, 1990, (Plat No. 55-A, Slide No. T1)

Boundary Survey Plat, (Book 120, Page 867, Slide No. 426)

National Flood Insurance Program, Flood Insurance Rate Map Community-Panel No. 350219 0005 C, (map revised July 16, 1996)

August 2, 2024

Chaparral Surveying, LLC

Professional Land Surveying

P.O. Box 629 Elephant Butte, New Mexico 87835

CERTIFICATE

This is to certify that I am a registered Professional Land Surveyor, that this plat is prepared from notes of field surveys made by me or under my supervision, that said surveys and this plat are true and correct to the best of my knowledge and belief.
I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this is a bounding survey of an existing tract or tracts.

This plat meets the minimum requirements of the Standards of Land Surveying in New Mexico.

David M. Sam
New Mexico Professional Surveyor
License Number 1225

INDEXING INFORMATION FOR COUNTY CLERK
Daniel Steele & Anthony Eddie Gonzales
(4737 & 5005)
Smith Terrace
Section 34, Tshp. 13 South, Rge. 4 West

Sierra Vista Hospital
Account No. 18568
Bk. 120, Pg. 840-843, (UD)
UFG 302-107-832-6010

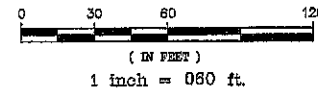
Stanley Bokelow, Matthew Bokelow
and Charish Miller
Account No. 8687
Bk. 140, Pg. 3749, (UD)
UFG 302-107-828-6122

Doris Claycomb Catterick
Account No. 12889
Bk. 117, Pg. 2026-2029, (UD)
UFG 302-107-828-6129

Legend:

- Round 1/2" rebar w/surveys stamped "NMP-6 1225" ○
- Round 3/8" rebar w/brass washer stamped "NMP-6 1225" ●
- Round 1/2" rebar, (no survey identification) ▲
- Round corner, (as noted) □

GRAPHIC SCALE



The City of Truth or Consequences, New Mexico, does hereby acknowledge the vacation of the 20' alley as shown on this plat.

Mayor

Date

Chaparral Surveying, LLC

P.O. Box 629

Elephant Butte, New Mexico 87935

(575) 740-0334

August 12, 2024

LEGAL DESCRIPTION-20' ALLEY

0.115 ACRES, (4998 sq. ft.)

A tract of land situate in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace, a subdivision in the City of Truth or Consequences, Sierra County, New Mexico, and more particularly described as follows, to-wit;

Beginning at the NE corner of this tract, a 3/8" rebar w/brass washer stamped "NMPS 13984", said corner being the NW corner of Lot 1, Block 1, Smith Terrace;

Thence, S00°03'36"E, a distance of 100.22 feet to an angle point in this tract, a 3/8" rebar w/brass washer stamped "NMPS 13984";

Thence, S00°05'08"E, a distance of 149.88 feet to the SE corner of this tract, whence a 3/8" rebar w/brass washer stamped "NMPS 13984", accepted as a witness corner, bears N00°05'08"W, a distance of 0.70 feet;

Thence, N89°45'50"W, a distance of 20.00 feet to the SW corner of this tract, a 1/2" rebar w/survcap stamped "NMPS 13984", said corner being the SE corner of Lot 8, Block 1, Smith Terrace;

Thence, N00°04'31"W, a distance of 250.10 feet to the NW corner of this tract, a 1/2" rebar w/survcap stamped "NMPS 13984", said corner being the NE corner of Lot 12, Block 1, Smith Terrace;

Thence, S89°45'00"E, a distance of 20.00 feet to the point of beginning of the tract hereon described, containing 0.115 acres, (4998 sq. ft.), more or less.

This legal description was prepared from a field survey by David M. Sem, NMPLS 12129, (re: Chaparral Surveying, LLC, Boundary Survey Plat dated August 9, 2024).

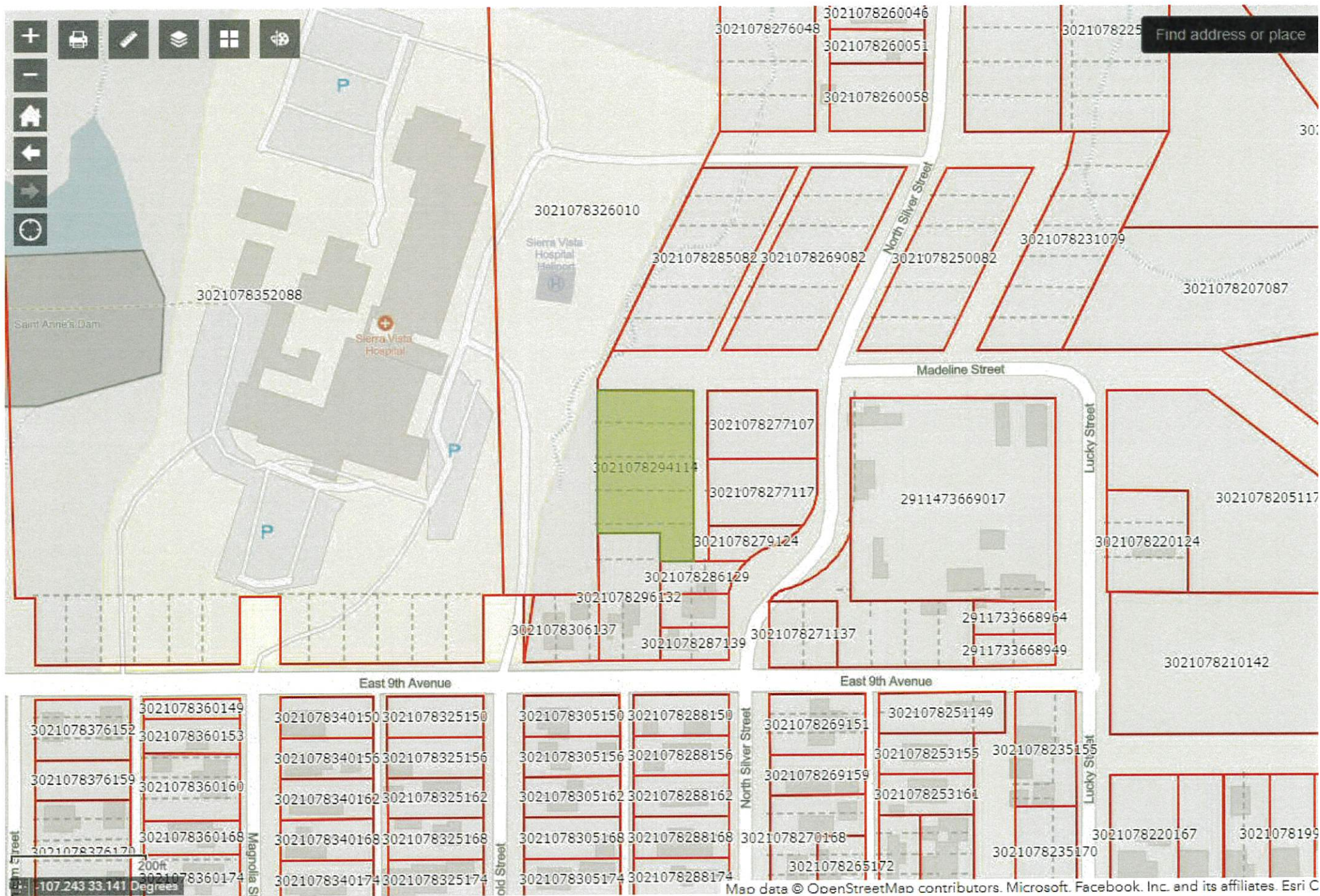
3021078294114

3021078277107

3021078277117

3021078279124

North Silver Street





Rolf Hechler
Mayor

Amanda Forrister
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



Destiny Mitchell
Commissioner

Ingo Hoeppepner
Commissioner

Angie Gonzales
City Manager

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

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City of Truth or Consequences Planning & Zoning Commission will hold a Public Hearing during their regular scheduled meeting on Monday, October 7, 2024, to receive input regarding the following:

Public Hearing/Discussion/Action: Vacation of Plats to Vacate a 20' alley situated in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace as per Sec. 15-18 (Vacation of Plats).

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

Should you have any questions regarding this Public Hearing, please contact Traci Alvarez at (575) 941-0565 or by email at talvarez@torcnm.org.

The agenda may be obtained on Friday, October 4, 2024, on the city website calendar at www.torcnm.org; by contacting the City Clerk's Office at 575-894-6673; or by email to: torcclerk@torcnm.org.

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

Publish on the following date:

- Sentinel– Thursday, September 19, 2024

Sec. 15-18. Vacation of plats.

- A. *Purpose of vacation of plat:* A vacation of plat occurs when part or all of a filed subdivision plat is eliminated.
- B. *Cause:* All of or any part of a final plat filed with the County Clerk may be vacated if:
1. The owners of record of the land proposed to be vacated sign an acknowledged statement declaring their wish that the plat or portion of a plat be vacated; or
 2. The City Commission finds that the plat's approval was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared.
- C. *Processes of vacation:* Vacations of plat that result in the decrease in the number of lots by not more than one lot may be processed using the Alternate Summary Process.
- D. *Statement of vacation:*
1. The vacation of all or a portion of a final plat by the owners of land within a subdivision may be initiated by submittal to the City's Zoning Administrator of the statement of vacation bearing the acknowledged signatures of all owners of record of property within the subdivided land to be vacated.
 2. The vacation of all or a portion of a final plat by the owners of land within a subdivision may also be initiated by a vote of a majority of the City Commission.
 3. Statements of vacation shall be accompanied by a list of the names of all owners of record of property within and contiguous to the subdivided land to be vacated, and shall also be accompanied by acknowledged statements by the authorized representatives of all utility companies that have easements within the area proposed for vacation, which statements shall state the utilities' agreement to or opposition to such vacation insofar as it affects their rights to use dedicated easements in the subdivision.
- E. *Scheduling and notification:* Within 60 days of receiving a statement of vacation and the appropriate review fee, the City Commission shall approve or deny the vacation, subject to the following:
1. Action shall be taken in a public meeting;
 2. At least 15 days prior to the meeting, notice of public hearing shall have been transmitted by first class mail to all owners of private property contiguous to or within 300 feet of the land to be vacated, and to all utilities with easements within or adjacent to the land proposed for vacation.
- F. *Action:* In approving conditionally approving or denying a vacation, the City Commission shall determine if the vacation is in the best interests of the public well-being, and whether any person is adversely affected by the vacation.
- G. *Right to retain roadways and utility easements:* The City Commission may require that dedicated roads within the area proposed for vacation remain dedicated, and may require that the rights of any utility existing before the vacation not be affected by the vacation.
- H. *Filing:* The City Commission's decision shall be filed in the records of the County Clerk of Sierra County by the applicant who shall also pay all required fees. When a vacation is approved, The County Clerk shall mark the final plat with the words "vacated" and shall refer on the final plat to the volume and page on which the statement of vacation is recorded. When a plat is partially vacated, both the City Commission's decision and the plat showing the partial vacation shall be filed in the records of the County Clerk of Sierra County. The County Clerk shall mark the final plat with the words "partially vacated" and shall refer on the final plat to both the volume and page on which the statement of vacation is filed, and the volume and page of the plat showing the area vacated.

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

Created: 2024-08-02 08:10:31 [EST]

(Supp. No. 103)

PLANNING AND ZONING COMMISSION

FINDINGS OF FACTS CHECKLIST

Request Date _____ Address _____

Findings of facts for recommendations and decisions.

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

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**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES
MONDAY, OCTOBER 7, 2024**

REGULAR MEETING

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, October 7, 2024, at 4:00 p.m.

INTRODUCTION:

ROLL CALL:

Chris Sisney, Chairman
Susan Buhler, Vice Chairman
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Lisa Kent, Member

ALSO PRESENT:

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Katy Martinez, Deputy City Clerk

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Proponents:

No Proponents

Opponents:

No Opponents

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Daniel Steel Applicant: Everything Traci said covers it. The 20-foot alley when they build houses on 9th street that block that alley off on 9th street then Madeline is a 60 foot right of way on the north side as you can see and that's where it ends and then it's a huge hole there right next to the helipad. I don't see it affecting anything in a negative way. We want to build one home up there, that is our plan. We are not developing this property.

Member Kent: you want to bring this all together into one?

Daniel Steel Applicant: Yes, its four tax ids with the county four different parcels.

Assistant City Manager Alvarez: He is not required to combine the parcels. If he wants to build the only difference in that requirement is if he doesn't combine the parcels when he goes to build is that his building has to meet the required setbacks of whatever parcel it sits on. He feels that could potentially be doable and if not, we will see him again when he combines the parcels.

Daniel Steel Applicant: That is what we will do is we will build one parcel. The view is great so. Most of that property is hill side. We met with the county assessor. We were going to originally ask to vacate half of Madeline also but he advised against that so that is why we are doing the 20-foot alley.

Proponents:

No Proponents

Opponents:

No Opponents

Chairman Sisney closed the public hearing.

Chairman Sisney made a motion to recommend approval to the City Commission for a Vacation of Plats to Vacate a 20' alley situated in Section 34, Township 13 South, Range 4 West, N.M.P.M., within Block 1, Smith Terrace as per Sec. 15-18 (Vacation of Plats). Vice Chairman Buhler seconded the motion. Roll call vote was taken. Motion carried unanimously.

5. NEW BUSINESS:

- a) Discussion/Action: Recommendation for the re-appointment of Board Member Chris Sisney.

Vice-Chairman Buhler made a motion to recommend to the City Commission the re-appointment of Chris Sisney to serve as a member on the board. Member Kent seconded the motion. Motion carried unanimously.

- b) Discussion/Action: Recommendation for the re-appointment of Board Member Esther Luchini.

Chairman Sisney made a motion to recommend to the City Commission the re-appointment of Chris Sisney to serve as a member on the board. Member Kent seconded the motion. Motion carried unanimously.

- c) Discussion/Action: Recommendation for the re-appointment of Board Member Susan Buhler.

Chairman Sisney made a motion to recommend to the City Commission the re-appointment of Chris Sisney to serve as a member on the board. Member Luchini seconded the motion. Motion carried unanimously.

5. REPORTS FROM THE BOARD:

Member Kent: We haven't talked about trying to discuss short term rental guidelines. Now that im back if we want to move forward with that.

Assistant City Manager Alvarez: Request that they city clerks' office put it on your agenda as a discussion/update for the first meeting and then you guys bring all of your information or discussion workshop even and bring all your research and our municipal code and where your concerns and changes would be and kind of hash it out. I know when we have gone to the utility board when revising something sometimes it will take 2 to 4 meetings for them to all

hash it out and come up with a draft that they want presented to the city commission. Start with the first one and see where you go from there.

Member Kent: Are you suggesting for the next meeting to bring and research or ideas that we may.

Assistant City Manager Alvarez: I would recommend that after you have a good discussion as a board and maybe come up with some ideas then you have one of your meetings scheduled as a public workshop and you don't have to wait for your next scheduled meeting you can make a decision and they can put it on the agenda for you guys to make a decision about a potential special meeting and meet sooner than a month later.

6. REPORTS FROM STAFF:

Assistant City Manager Alvarez: Just to keep you guys aware of where code is going at this time we have encountered some delays and hurdles in the Magistrate court so our Code Enforcement Officer Tyler went to the planning and zoning conference and got some really good ideas on how Edgewood is handling their system and it looks like it could potentially streamline our system a little bit. You may hear about or see some information coming to you guys potentially at the next meeting or the meeting after for an update that would help us not have to take some of these cases through court. Unfortunately, I don't know if it's because Magistrate is busy or if it's just the idea behind the judges, but they don't want to hear or deal with code enforcement violations. We will keep you posted as we move forward. It will involve changing our ordinances, but they have some great ideas. I believe they are planning on if you are able to go to the city commission meeting on Wednesday they are having a really good presentation. Either look at the agenda packet after the meeting I don't think the presentation is in the actual meeting packet yet. He will do the presentation and then it will be available or if you are able to come to the meeting that would be great. Wednesday the 9th at 9am.

Member Luchini: Which issues go to Magistrate Court?

Assistant City Manager Alvarez: All of our municipal code violations go to Magistrate. We have no Municipal Court, so everything goes straight to magistrate. In the past anything that was a city ordinance and not a state law or municipal court was the one that heard, and we had struggles there as well. They deal with some but code enforcement violations they just aren't really interested in hearing and taking a long time to get through to process so it gets frustrating on our side because you submit something and then you're waiting 30 to 60 days before you get a trial date and then sometimes it gets suspended for certain days or dismissed. Unfortunately, we are not the only municipality encountering that. That is why Edgewood moved a whole new process they have been really successful. It's been so successful that

Albuquerque and Santa Fe have even taken on some of the process that Edgewood is doing and so that is what Tyler is presenting on Wednesday.

7. ADJOURNMENT:

Chairman Sisney adjourned the meeting at 4:20 p.m.

PASSED AND APPROVED ON THIS 4th DAY OF NOVEMBER, 2024.

**Chris Sisney, Chairman
Planning & Zoning Board**



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.5

SUBJECT: Discussion/Action – Agreement Between Owner (City of T or C) and Engineer (Wilson & Co) for Professional Services for the Water System Performance Improvements Phase 2 (WSPI 2)

DEPARTMENT: Community Development

DATE SUBMITTED: August 21, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

City received USDA Funding for WSPI 2 Project. This is the agreement for Engineering Services. The agreement has been approved by USDA.

Recommendation:

Approve Agreement

Attachments:

- Agreement
- USDA Letter of Conditions

Fiscal Impact (Finance): Yes

\$9,900,000.01 total Grant/loan for project

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 10-23-24

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of October 20, 2024 ("Effective Date") between
City of Truth or Consequences ("Owner") and
Wilson & Company, Inc., Engineers & Architects ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Water System Performance Improvements – Phase 2
("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:
Completion of Engineering Design and Construction Contract Package, to meet USDA funding requirements, along
with the required additional engineering, construction administration, and construction observation as described in
Exhibit A.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
 2. the presence at the Site of any Constituent of Concern; or
 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Invoices will include a breakdown

of services provided. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by 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.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs. Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by 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.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.
2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of

such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of

time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any

written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of

Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity

from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 - 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 - 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract

Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances

for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. *Agency* – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.

- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. **[Not Used]**
- K. Exhibit K, Amendment to Owner-Engineer Agreement. **[Not Used]**

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 Federal Requirements

- A. **Agency Concurrence.** Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 (2014) hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. **Restrictions on Lobbying.** Engineer and each Consultant shall comply with "*Byrd anti-lobbying amendment (31 U.S.C. 1352)*" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Truth or Consequences

Engineer: Wilson & Company, Inc., Engineers & Architects

By: _____
Print name: Rolf Hechler
Title: Mayor
Date Signed: 10-23-2024

By: Brian P. McBride
Print name: Brian McBride
Title: Vice President/WWW Service Unit Manager
Date Signed: 10/08/2024

Engineer License or Firm's Certificate No. (if required):

State of: _____

Address for Owner's receipt of notices:

505 Sims Street

City of Truth or Consequences, NM 87901

Designated Representative (Paragraph 8.03.A):
Traci Alvarez

Title: Assistant City Manager

Phone Number: 575-952-0565

E-Mail Address: talvarez@torcnm.org

Address for Engineer's receipt of notices:

Wilson & Company Inc., Engineers & Architects

44401 Masthead St., NE, Suite 150

Albuquerque, NM 87109

Designated Representative (Paragraph 8.03.A):
Brian McBride

Title: Vice President/WWW Service Unit Manager

Phone Number: 602-283-2720

E-Mail Address: Brian.mcbride@wilsonco.com

This is **EXHIBIT A**, consisting of **21** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 20, 2024**.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: *N/A*
 - b. In addition, Engineer must identify, study and evaluate multiple potential alternative solutions potentially available to the Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

Exhibit A – Engineer's Services

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6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed and approved by the Agency, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. Perform or provide the following other Study and Report Phase tasks or deliverables:

Exhibit A – Engineer's Services

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- a. Environmental Documentation: It is expected that the level of environmental documentation for this project includes the preparation of an Environmental Report in support of a Categorical Exclusion (CE). The Environmental Report will be prepared in accordance with RD Instruction 1970-B Section 1970.54. The Environmental Report must be concurred in by the Agency.
 - b. Hazardous Materials: Wilson & Company has not been made aware of any hazardous materials or conditions within the project area. If any hazardous conditions/materials are identified within the project area that require any clearances, permits, assessments or mitigation measures beyond the environmental report scope as defined by RD Instruction 1970-B Section 1970.54, additional fees would be required.
 - c. Other Environmental Resource Analysis to Support CE: Hours are included for additional environmental resource analysis necessary to support the CE, as may be required by the USDA. Resources may include, but are not limited to noise, air quality, trails and park/recreation facilities.
 - d. Agency Consultation, Letters and Meetings: Wilson & Company will contact and submit correspondence to all applicable Tribes, State Historical Preservation Office and other applicable Federal, State, and Local Agencies as required to complete an environmental report.
 - e. Environmental Report Preparation: Wilson will develop a draft copy of the Environmental Report required to support the CE and forward to the Village to review. Once finalized, Wilson will submit the document to the USDA. All documentation, including figures, tables and Appendices required for completion of the Environmental Report will be completed consistent with USDA standards.
 - f. CE Documentation: Wilson will develop a draft copy of the CE and forward to the Village to review. Once finalized, Wilson will submit the document to the USDA. All documentation, including figures, tables and Appendices required for completion of the CE will be completed consistent with USDA standards.
 - g. If any public involvement, "formal consultations" or additional meetings are required beyond the scope of an environmental report to complete an environmental assessment (EA) or Environmental Information Document (EIS), additional scope and fees will be negotiated.
15. Furnish **Two (2)** review copies of the Report and any other Study and Report Phase deliverables to Owner within **60** days of the Effective Date and review it with Owner. Within **7** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and

Exhibit A – Engineer's Services

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one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within 90 days of receipt of Owner's and Agency's comments.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner and concurrence by Agency of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
 - 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 - 2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner and Agency during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 - 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 - 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 - 5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

Exhibit A – Engineer's Services

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6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.
 9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

NA
 10. Furnish [2] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [210] days of authorization to proceed with this phase, and review them with Owner. Within [14] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner [2] copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [14] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables:

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The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

10. Furnish for review by Owner, its legal counsel and Agency, and other advisors, [1] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within [365] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within [7] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit [4] final copies of such documents to Owner within [14] days after receipt of Owner's comments and instructions.
 12. Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certifications (Exhibit A, Attachment 6) for this purpose.
 13. Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, and Bidding Documents are either produced in the United States or are the subject of an approved waiver under AIS.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables and all final design phase deliverables have been accepted by Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for

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performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is [1]. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6.
 - a. The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and

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applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

- b. Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.
 10. Provide copies of Manufacturers' Certification letters to the Bidders on any brand name iron and steel products along with the Plans, Specifications and Bidding Documents. Manufacturers' Certification Letters are to be included in the Bidding Documents and must be kept in the engineer's project file and on site during construction.
 11. Provide copies of Manufacturers' Certification letters to the Contractor on any brand name iron and steel products along with the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certification Letters must be kept in the engineer's project file and on site during construction.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions

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specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference*: Participate in and chair a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols*: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents*: Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

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9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
- a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction

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Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with AIS. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to

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be sole-source, the Engineer must furnish the Manufacturers Certification to the Contractor for said Item. Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- d. Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the

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design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. (c) Review Change Proposals to ensure compliance with AIS.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

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22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating Instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
- a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications from the Contractor for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and a copy of Contractor's Certification to the Agency.

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26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certification letters for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Engineer's, Contractors', and Manufacturers' Certification letters to the Owner and a copy of Contractor's Certification letter to the Agency. Provide a list of manufacturers of American Iron and Steel products used in the project and include manufacturer's name and location, and product(s) to the Agency.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:

NA

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- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements not including preparation of the Environmental Report defined under Basic Services; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, but only if the Owner's request is made after completion of the Study and Report Phase.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:

- a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.

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14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. [Deleted].
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
 6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
 7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.

Exhibit A – Engineer's Services

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8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
- B. Owners are ultimately responsible for compliance with 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 and will be responsible for the following:
 - A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
 - B. Sign change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledge responsibility for compliance with American Iron and Steel requirements.
 - C. Obtain the certification letters from the Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.
 - D. Where the Owner directly procures American Iron and Steel products,
 1. Include American Iron and Steel clauses in the procurement contracts;
 2. Obtain Manufacturers' Certifications; and
 3. Provide copies to Engineers and Contractors.

This is **EXHIBIT B**, consisting of **4** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 20, 2024**.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

Exhibit B – Owner's Responsibilities

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1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their

Exhibit B – Owner's Responsibilities

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incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.

Exhibit B – Owner's Responsibilities

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- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

B2.02 Owners are ultimately responsible for compliance with 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 and will be responsible for the following:

- A. **Signing** loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel 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 Iron and 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. 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 of RUS Bulletin 1780-35 must be included in the Agreement for Engineering Services.
- E. Where the owner directly procures American Iron and Steel products, **including** American Iron and Steel clauses in the procurement contracts and **obtaining** manufacturers' certification letters and **providing** copies to consulting engineers and contractors.

This is **EXHIBIT C**, consisting of 5 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated **October 20, 2024**.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 *Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment*

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of **\$1,143,055.00**, excluding gross receipt tax based on the following estimated distribution of compensation:
 - a. Predevelopment Work (PER/ER) \$[42,693.00]
 - b. Design \$[789,108.00]
 - c. Additional Services (Stated in PER) \$[186,000.00]
 - d. Construction Management \$[125,254.00]
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner and Agency.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
 4. Reimbursable expenses for Basic Services will be itemized in Appendix 1 of Exhibit C, with rates and charges listed, and with a not to exceed value for each reimbursable expense. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges):
 - a. Vehicle Mileage
 5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the

billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding thirty (30) months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted with concurrence of the Owner and Agency .

COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment

C. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$265,000.00. The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services.
2. *Reimbursable Expenses:* In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges):
 - a. Vehicle Mileage
3. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday for a **360 day** construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services. Changes will not be effective unless and until concurred by the Owner and Agency.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
 2. Additional Services will be completed on a Time & Materials basis in accordance with the rate schedule provided in Appendix 2 of Exhibit C. Cost proposals for all work will be provided prior to starting Additional Service.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.1.
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer. Changes will not be effective unless and until concurred in by the Owner and Agency.

C. Other Provisions Concerning Payment for Additional Services:

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.1.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at no cost.

This is **Appendix 1 to EXHIBIT C**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 20, 2024**.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

DIRECT EXPENSES			BILLING RATE
Reproduction	per B&W 8.5x11 copy	Unit Rate=	\$0.06
	per B&W 11x17 copy	Unit Rate=	\$0.12
	per Color 8.5x11 copy	Unit Rate=	\$0.24
	per Color 11x17 copy	Unit Rate=	\$0.47
	Foam Core Board	Unit Rate=	\$13.95
Mileage (CM)	per mile	Unit Rate=	\$0.67
Mileage (Eng)	per mile	Unit Rate=	\$0.67
Meals and Lodging		Unit Rate=	At Cost

This is **Appendix 2** to **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 20, 2024**.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

- Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
- The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

- Hourly rates for services performed on or after the date of the Agreement are as shown on below:

		2024-2025	
<i>Employee/Class/Activity Type, Code & Name</i>	<i>Reg. Rate</i>	<i>O/T Rate</i>	
A1 INTERN ARCHITECT/JOB CPTN(UNLIC)	99.00	148.50	
A2 INTERN ARCHITECT/JOB CPTN(UNLIC)	109.00	163.50	
A3 INTERN ARCHITECT/JOB CPTN(UNLIC)	124.00	186.00	
A4 ARCHITECT/(LICENSED)	164.00	246.00	
A5 ARCHITECT (LICENSED)	192.00	192.00	
A6 ARCHITECT (LICENSED)	224.00	224.00	
AD1 RECEPTIONIST/FILECLERK/MAINT I	65.00	97.50	
AD2 ADMIN ASST II/ RECEPT/MAINT II	75.00	112.50	
AD3 ADMIN ASST III/ RECEPT/MAINTIII	81.00	121.50	
AD4 ADMIN ASST IV/EXEC ASST IV	100.00	150.00	
AD5 SR ADMIN V/EXEX ASST V/ ADM MGR	112.00	112.00	
FC1 CONSTRUCTION OBSERVER	76.00	114.00	
FC2 CONSTRUCTION OBSERVER	87.00	130.50	
FC3 CONSTRUCTION OBSERVER	106.00	159.00	
FC4 CONSTRUCTION OBSERVER	124.00	186.00	
FC5 CONSTRUCTION OBSERVER	149.00	149.00	
FC6 CONSTRUCTION OBSERVER	180.00	180.00	
FC7 CONSTRUCTION OBSERVER	242.00	242.00	
FS1 CHAINMAN	65.00	97.50	
FS2 RODMAN	75.00	112.50	
FS3 INSTRUMENTMAN	81.00	121.50	
FS4 PARTY CHIEF	106.00	159.00	
FS5 CHIEF SURVEYOR, FIELD SUPERVISOR	118.00	118.00	
FS6 DEPARTMENT HEAD	180.00	180.00	

Exhibit C – Appendix 2: Standard Hourly Rates Schedule.

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FS7	SR DEPARTMENT MANAGER	239.00	239.00
IA1	INTERN	50.00	75.00
IA2	COLLEGE STUDENT	66.00	99.00
IA3	GRAD STUDENT/COLLEGE GRAD	69.00	103.50
IA4	GRAD STUDENT/COLLEGE GRAD	75.00	112.50
OD1	APPRENTICE DRAFTER	75.00	112.50
OD2	DRAFTER, TRACER, PLOTTER OPERAT	84.00	126.00
OD3	DRAFTER, DETAILER	93.00	139.50
OD4	SR DRAFT, DETAIL, CAD OPERATOR	112.00	168.00
OD5	SR DRAFT, DETAIL, SQUAD LEADER	137.00	137.00
OD6	CHIEF DRAFTER	152.00	152.00
OF6	ASSOCIATE VICE PRESIDENT	279.00	279.00
OF7	VICE PRESIDENT	317.00	317.00
OF8	SR VICE PRESIDENT	391.00	391.00
OP1	APPRENTICE STEREO OPERATOR	65.00	97.50
OP2	STEREO OPERATOR	72.00	108.00
OP3	STEREO OPERATOR	83.00	124.50
OP4	SR STEREO OPER, SQUAD LEADER	118.00	177.00
OP5	PHOTOGRAMMETRIST, SUPERVISOR	140.00	140.00
OP6	CHIEF PHOTOGRAM, DEPARTMENT HEAD	174.00	174.00
OP7	CHIEF PHOTOGRAM	248.00	248.00
P1	GRAD ENG/ARCH IN RES (UNLIC)	118.00	177.00
P2	GRAD ENG/ARCH IN RES (UNLIC)	137.00	205.50
P3	STAFF DETAIL DESIGNER (UNLIC)	155.00	232.50
P4	STAFF DETAIL DESIGNER (LICENSED)	174.00	261.00
P5	PROJECT DESIGNER (LICENSED)	236.00	236.00
P6	PROJECT DESIGNER (LICENSED)	273.00	273.00
P7	DEPT HEAD, PRINCIPALS, (LIC)	317.00	317.00
PD1	DETAIL DESIGNER (UNLICENSED)	87.00	130.50
PD2	SR DETAIL DESIGNER (UNLICENSED)	97.00	145.50
PD3	SENIOR DESIGNER II	126.00	189.00
PD4	SENIOR DESIGNER III	149.00	223.50
PD5	SENIOR DESIGNER	168.00	252.00
PL1	PLANNER	84.00	126.00
PL2	PLANNER	97.00	145.50
PL3	PLANNER	118.00	177.00
PL4	PROJECT PLANNER	144.00	216.00
PL5	SENIOR PROJECT PLANNER	172.00	172.00
PL6	SENIOR PROJECT PLANNER	242.00	242.00
RP1	RAILROAD PROFESSIONAL	152.00	228.00
RP2	RAILROAD PROFESSIONAL	165.00	247.50
RP3	RAILROAD PROFESSIONAL	180.00	270.00
RP4	RAILROAD PROFESSIONAL SENIOR	199.00	199.00
RP5	RAILROAD PROFESSIONAL MANAGER	208.00	208.00
RP6	SENIOR RAILROAD SPECIALIST	228.00	228.00
RP7	SENIOR RAILROAD SPECIALIST	252.00	252.00
SP1	RE SPEC/PLNNR/SR ROW/PM/OTHR	85.00	127.50

Exhibit C – Appendix 2: Standard Hourly Rates Schedule.

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SP2	SR RE SPEC/PUBLIC INVOL/CONSULT/OTHER	92.00	138.00
SP3	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	130.00	195.00
SP4	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	158.00	237.00
SP5	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	194.00	194.00
SP7	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	248.00	248.00
SP6	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	273.00	273.00

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated October 20, 2024.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.

Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.

The duties and responsibilities of the RPR are as follows:

General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

Liaison:

Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

Clarifications and Interpretations: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,

Shop Drawings and Samples:

Record date of receipt of Samples and Contractor-approved Shop Drawings.

Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.

Proposed Modifications: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

Review of Work; Defective Work:

Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and

Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

Inspections, Tests, and System Start-ups:

Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

Records:

Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.

Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

Maintain records for use in preparing Project documentation.

Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

Maintain all Manufacturers' Certification letters in the project file and on site during construction to ensure compliance with American and Iron Steel requirements mandated by 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, as applicable.

Reports:

Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

[Deleted]

Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

Completion:

Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

Resident Project Representative shall not:

Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

Exceed limitations of Engineer's authority as set forth in this Agreement.

Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.

Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.

Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

Accept Shop Drawing or Sample submittals from anyone other than Contractor.

Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated October 20, 2024.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Water System Performance Improvements – Phase 1

OWNER: City of Truth or Consequences

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: Wilson & Company, Inc., Engineers & Architects

NOTICE DATE:

To:

Owner

And To:

Contractor

From:

Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated October 20, 2024, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated October 20, 2024.

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of **\$6,834,703.00**.
- B. A bidding or negotiating contingency of **10** percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit. Engineer's determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The

Exhibit F – Construction Cost Limit.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 20, 2024**.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: Statutory

b. Employer's Liability --

- | | |
|---|-------------|
| 1) Bodily injury, each accident: | \$1,000,000 |
| 2) Bodily injury by disease, each employee: | \$1,000,000 |
| 3) Bodily injury/disease, aggregate: | \$1,000,000 |

c. General Liability --

- | | |
|---|-------------|
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |
| 2) General Aggregate: | \$1,000,000 |

d. Excess or Umbrella Liability --

- | | |
|-----------------------|-------------|
| 1) Per Occurrence: | \$1,000,000 |
| 2) General Aggregate: | \$1,000,000 |

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

f. Professional Liability --

- | | |
|---------------------|-------------|
| 1) Each Claim Made | \$1,000,000 |
| 2) Annual Aggregate | \$1,000,000 |

Exhibit G – Insurance.

2. By Owner:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, Each Accident \$1,000,000
 - 2) Bodily injury by Disease, Each Employee \$1,000,000
 - 3) Bodily injury/Disease, Aggregate \$1,000,000
- c. General Liability --
 - 1) General Aggregate: \$4,000,000
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$2,000,000
- d. Excess Umbrella Liability
 - 1) Per Occurrence: \$5,000,000
 - 2) General Aggregate: \$5,000,000
- e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):
\$5,000,000

B. *Additional Insureds:*

- 1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:
 - a. Wilson & Company, Inc., Engineers & Architects
Engineer
- 2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
- 3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 20, 2024**.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- C. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a professional mediator agreed to by both parties. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 20, 2024**.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

D. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.

Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of [] pages,
referred to in and part of the **Agreement**
between Owner and Engineer for Professional
Services dated [].

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

Title: _____

Date Signed: _____

By: _____
Print
name: _____

Title: _____

Date Signed: _____

RUS CERTIFICATION PAGE

PROJECT NAME: City of Truth or Consequences, Water System Performance Improvements - Phase 2

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500 (2014). In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance with the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ 957,055.00
Resident Project Observation	\$ 265,000.00
Additional Services	\$ 186,000.00
TOTAL:	\$ 1,408,055.00

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.



Engineer
10/08/2024

Date

Brian P McBride **Vice President, Water-Wastewater**

Name and Title

Owner Date

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative Date

Name and Title



United States Department of Agriculture

AD 1048

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

(Read Instructions On Page Two Before Completing Certification)

- A. 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 participation in this transaction by any Federal department or agency;
- B. 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.

ORGANIZATION NAME

Wilson & Company, Inc.

PR/AWARD NUMBER OR PROJECT NAME

NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)

Brian P McBride, PE Vice President, Water/Wastewater

SIGNATURE(S)

DATE

10.08.2024

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Instructions for Certification

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (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(s) 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," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form 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 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.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
- (8) 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.
- (9) 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 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 and/or debarment.



United States Department of Agriculture

Rural Development

July 30, 2024

New Mexico
State Office

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

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

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

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

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

Dear Mayor Forrister:

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

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

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

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

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

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

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

Form RD 1940-1, "Request for Obligation of Funds"

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

The conditions are as follows:

SECTION I - PROJECT SCOPE

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION II – RATES & TERMS

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

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

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

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

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

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

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

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

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

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

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

Principal –

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

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

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

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

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

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

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

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

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

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

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

Waivers

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

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

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

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

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

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V – REQUIREMENTS PRIOR TO CLOSING

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

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

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

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

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

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

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

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

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

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

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

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

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

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

See Section VI for additional information regarding audits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

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

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

Sincerely,

**ELIZABETH
YBARRA**

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

Christine Griego by Elizabeth Ybarra Acting
Community Programs, Program Director

Attachments:

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

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

FORMS and BULLETINS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix A
(INSTRUCTIONS TO FIELD)

A. Reporting Total Compensation of Recipient Executives

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

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

B. Subaward and Subrecipients

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

Subrecipient means an entity that:

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

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

Appendix B

Build America, Buy America Evidence Standards

Manufacturers

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

Architects and Engineers

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

Resident Project Representative / Resident Inspector

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

Contractors

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

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CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.6

SUBJECT: Discussion/Action – Approve proposed Service Agreement between the Truth or Consequences Municipal School District and the Truth or Consequences Police Department

DEPARTMENT: Police Department

DATE SUBMITTED: October 11, 2024

SUBMITTED BY: Chief Luis Tavizon

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

Summary/Background:

The School District (TCMS) requires the services of a School Resource Officer (SRO). The Truth or Consequences Police Department (TCPD) agrees to provide and manage for TCMS an SRO in the School District consisting of one full-time SRO, their vehicle, supplies, and equipment and TCMS agrees to reimburse TCPD for its expenses in providing the SRO program.

Recommendation:

It is the recommendation of the Chief of Police, that the commission approve the proposed Service Agreement between the School District and the Police Department.

Attachments:

- Service Agreement between TCMS and TCPD.

-

Fiscal Impact (Finance): Yes

TCMS agrees to reimburse the City fifty-nine thousand dollars (\$59,000) per school twelve-month period and shall occur in twelve equal monthly installments on or about the first day of each calendar month.

Legal Review (City Attorney): Yes

The City Attorney is welcome to review the service agreement at any time and give his legal opinion.

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 10-23-24

THIS SERVICE AGREEMENT dated this 1, day of July, 2024

BETWEEN AND BY:

Truth or Consequences Municipal Schools (TCMS)
910 N. Date Street
Truth or Consequences, N.M. 87901

AND

City of Truth or Consequences Police Department (TCPD)
507 McAdoo St.
Truth or Consequences, N.M. 87901

WHEREAS, the TCMS requires the services of a School Resource Officer (SRO) and the TCPD agrees to provide and manage for the TCMS an SRO in the TCMS consisting of one full-time SRO, their vehicle, supplies and equipment and the TCMS agrees to reimburse the TCPD for its expenses in providing the said SRO program; and

WHEREAS the TCMS and TCPD desire to set forth in this SRO Agreement the specific terms and conditions of the services to be performed and provided by the said SRO in the TCMS;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section I: Goals and Objectives

It is understood and agreed that the TCMS and TCPD officials share the following goals and objectives with regard to the SRO in the schools:

Foster a positive community relationship with students, school officials, and parents to include participating in educational programs and activities that will increase student's knowledge of and respect for the law and the function of law enforcement agencies;

Attend extra-curricular activities held at schools, when possible, such as school board meetings, athletic events, and other school functions;

Act swiftly and cooperatively when responding to reports of criminal offenses at school;

Report crimes that occur on campus to school officials, and investigate any crime reported that occurred within TCPD jurisdiction. Assist with home visits for truancy, attendance, or student welfare issues at residences within the city. If the crime did not occur or a residence is not located within TCPD jurisdiction, the SRO shall cooperate and refer such case to a law enforcement agency that has jurisdiction to investigate the matter.

Provide traffic control at schools for the safety and protection of students and the general public.

Section II: Employment and Assignment of School Resource Officers

TCPD agrees to employ one SRO during the term of this agreement. The SRO shall be an employee of the TCPD and shall be subject to the administration, supervision, and control of the TCPD and City of Truth or Consequences, except as such administration, supervision, and control is subject to the terms and conditions of this Agreement.

The SRO shall be subject to all other personnel policies and practices of the TCPD and the City of Truth or Consequences. TCPD and the City of Truth or Consequences, in its sole discretion, shall have the power and authority to hire, discharge, and discipline SRO. The TCPD shall hold the TCMS free, harmless, and indemnified from and against any and all claims, suits, or causes of action arising out of allegations of unfair or unlawful employment practices brought by the SRO.

In the event an SRO is absent from work for less than one school day, the SRO shall notify their supervisor in the TCPD and TCMS agrees that on-duty patrol officers will handle calls for services arising from TCMS while the SRO is absent. TCPD agrees to assign another police officer to substitute as an SRO only when the SRO is absent from the school for more than one school day. TCPD agrees to notify the superintendent when an SRO is absent from the school for a period exceeding one school day.

SRO will provide each school principal and superintendent with his or her working schedule and phone number contact information. TCMS agrees that the SRO may have occasions during a school work day where he or she may be not physically present at the schools such as but not limited to: attendance at court-ordered hearings, attendance at department meetings and/or training, attendance at prosecution meetings, assistance to on-duty patrol officers/detective, or conducting traffic safety enforcement operations near or around school zones.

Section III: Compensation

For and in consideration of the TCPD providing the SRO Program as described herein, the TCMS agrees to reimburse the City of Truth or Consequences fifty-nine thousand dollars (\$59,000) per school twelve-month period, subject to approval by the Truth or Consequences City Commission and the Truth or Consequences Municipal Schools School Board. The said compensation shall occur in twelve equal monthly installments on or about the first day of each calendar month by the TCMS to the City of Truth or Consequences. Any SRO incurred overtime compensation (any hours after the 84th hour per city pay period) related to TCMS SRO duties shall be billed to TCMS at the end of the month and due payable to the City of Truth or Consequences by the 10th day of the following month.

Section IV: Duty Hours

The maximum number of hours that an SRO officer shall be on duty in a workweek shall be 42 hours and the minimum shall be 40 hours. Specific SRO duty hours are 7:30 a.m. to 3:30 p.m. during school-in-session days. Prior SRO schedule change arrangements can be made when there is an agreement between TCMS and the assigned SRO to include allowing the SRO to change the above specific duty hours on particular days (i.e., flex Fridays) to other days/times so that the SRO can attend extracurricular activities to include any school-sponsored meetings, events, functions including athletic events on regular work time opposed to overtime.

TCMS agrees to provide TCPD a schedule or reasonable notice of extracurricular activities to include any school-sponsored meetings, events, or functions including athletic events, for which the SRO presence is requested. TCMS agrees to compensate TCPD for any overtime hours (any hours after the 84th hour per city pay period) worked by the SRO at their request. When school is not in session, the SRO shall perform regular law enforcement duties within the city at the direction of TCPD.

It is understood and agreed that time spent by SRO attending court juvenile, criminal cases, and/or any other official matter arising from and/or out of their assignment as an SRO shall be considered as hours worked under this Agreement. TCMS agrees that in the event of an emergency, the SRO is ordered by the TCPD to leave their school duty station during normal duty hours as described above and to perform other services for the TCPD, the time spent shall not be considered hours worked under this Agreement, but the SRO shall make-up those hours in the current or upcoming pay period.

Section V: Basic Qualifications of School Resource Officers (SROs)

To be an SRO, an officer must first meet all of the following basic qualifications:

Shall be a commissioned law enforcement officer;

Shall possess sufficient knowledge of the applicable Federal and State laws, City Ordinances, and Board of Education policies and regulations;

Shall be capable of conducting criminal investigations;

Shall possess even temperament and set a good example for the students; and

Shall possess communication skills that would enable the officer to function effectively within the school environment.

Section VI: Duties of School Resource Officers (SROs)

To protect the lives and property of community residents, school employees, students, and visitors;

To provide traffic control at schools for the safety and protection of students and the general public;

To enforce Federal, State, and Local criminal laws and ordinances, and to assist school officials with the enforcement of Board of Education Policies and Administrative Regulations;

To investigate criminal activity committed on or adjacent to school property or in school facilities or transportation vehicles within city limits;

To answer questions that students may have about State, Federal, or Local laws;

To assist other law enforcement officers with outside investigations concerning students attending the school(s) to which the SRO is assigned;

To provide security for special school events or functions, such as school meetings, at the request of the principal.

Section VII: Chain of Command

As employees of the TCPD, the SRO shall follow the chain of command as set forth by TCPD leadership. In the performance of their duties, the SRO shall coordinate and communicate with the principal or the principal's designee.

Section VIII: Training/Briefing

The SRO shall be required by the TCPD to attend training and/or briefing sessions. These sessions will be held at the direction of the TCPD and any time spent in these sessions shall be considered time worked under this Agreement.

Training sessions will be conducted to provide the SRO with appropriate in-service training as required by law. The TCMS also may provide training to the SRO on Board of Education policies, regulations, and procedures.

Section IX: Dress Code, Supplies and Equipment

TCPD shall provide the SRO uniforms/equipment/department-assigned vehicle. In addition, the TCPD agrees to:

Maintain the vehicles assigned to SROs; pay for gasoline, oil replacement tires, and other expenses associated with the operation of the said vehicles; and purchase and maintain comprehensive general auto liability insurance on the said vehicles.

TCPD agrees to provide the standard-issued pistol and round of ammunition for each SRO. TCMS agrees to provide the SRO with the usual and customary office supplies at each school site as needed in the performance of their duties.

Section X: Transporting Students

It is agreed that the SRO shall not transport students in their vehicles except when the students are victims of a crime, under arrest, or some other emergency circumstances exist; and when students are suspended/expelled and sent home from school pursuant to school disciplinary actions if the student's parent or guardian has refused to pick-up the child within a reasonable time period and the student is disruptive/disorderly and his/her continued presence on campus is a threat to the safety and welfare of other students and school personnel.

In cases where the parents refuse to pick up the student, the SRO shall contact the Children, Youth, and Families Department (CYFD) to inform them of the situation and arrange proper care for the student. If the student to be transported off campus is not under arrest, a victim of a crime, or violent or disruptive the TCMS school administration shall provide transportation for the student and the SRO may accompany a school official in transporting a student.

If feasible and when able to, the SRO shall notify the school principal or appropriate school official about a student needing to or being removed from campus.

Section XI: Investigation, Interrogation, Search and Arrest Procedures

The SRO shall adhere to the standard operating procedures (SOP) for the investigation of crimes and interrogation, search, and arrest of students as written by TCPD policies, procedures, and state law.

Section XII: Search Procedures

If the school official has reasonable grounds for suspecting that a search of a student or a student's possessions will uncover evidence that the student has violated or is violating either the law or the rules of the school, the school official may search the student, and the student's pockets, pocketbook, book bag, desk, locker, vehicle or any other similar location within the student's control. If the search uncovers evidence of criminal misconduct, the evidence shall be turned over to the SRO. SRO may search a student or the student's possession including a vehicle only when probable cause to apply and obtain a search warrant, obtaining owner consent, and/or other exceptions to the search warrant rule such as but not limited to plain view doctrine, search incident to arrest, or exigent circumstances.

Section XIII: Controlled Substances

School officials shall notify the SRO in all cases involving the possession, sale, or distribution of controlled substances at school or school activities. Any controlled substances or suspected controlled substances confiscated by school officials shall be turned over to the SRO for further investigation and custody.

Section XIV: Access to Education Records

School officials shall allow SROs to inspect and copy demographic records (i.e.; name, date of birth, address, phone number, parental information, grade, and school photograph) as maintained by the school. However, law enforcement officials may not inspect and/or copy confidential student education records except in emergency situations.

If some information in a student's cumulative record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety; the need of the information to meet the emergency situation and the extent to which time is of the essence.

If confidential student records information is needed, but no emergency situation exists, the information may be released only upon the issuance of a search warrant or subpoena to produce the records.

Section XV: Term of Agreement

The term of this agreement is one year from the day and year first written above. The Agreement shall be renewed and extended annually for additional and successive one-year terms unless notice of nonrenewal is given by either party, in writing, with at least a sixty (60) day notice.

Section XVI: Insurance and Indemnification

Each party agrees that it shall be responsible for liability arising from personal injury or damage to property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (NMSA 1978, Section 41-4-1, et seq.) and any amendments thereto. This section is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The parties and their "public employees," as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, and do not waive any defense or limitations of liability pursuant to law. No provision in this Agreement modified and/or waives any provision of the New Mexico Tort Claims Act.

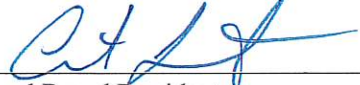
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date noted below:

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY:

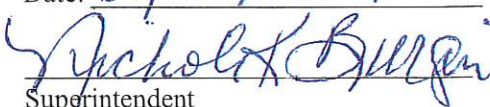
School Attorney

ATTEST:

TRUTH OR CONSEQUENCES
MUNICIPAL SCHOOLS BOARD



School Board President

Date: Sept 9, 2024


Superintendent

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY:

City Attorney

ATTEST:

City Clerk

TRUTH OR CONSEQUENCES
CITY COMMISSION

Mayor

Date: _____

City Manager



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.7

SUBJECT: Approval of Purchase Requisitions Over \$20,000
DEPARTMENT: Finance
DATE SUBMITTED: October 18, 2024
SUBMITTED BY: Leiandra Guerra, CPO
WHO WILL PRESENT THE ITEM: Leiandra Guerra, CPO

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 10-23-24



City of Truth or Consequences

505 Sims Street

Truth or Consequences, New Mexico 87901

City (575) 894-6673 • Fax (575) 894-7767

October 21, 2024

Dear Mayor Hechler, Mayor Pro-Tem Forrister and City Commissioners:

RE: COMMISSION CHAMBERS AUDIO VISUAL SYSTEM

The Governing Body would like to utilize their Non-Capital Items Fund, to purchase a new audio-visual system through Statewide Price Agreement vendor Poweron. This item is subject to approval based on the requirement for approvals over the \$20,000 Dollar threshold.

I am requesting our City Commission to publicly approve this purchase and allow me to move forward with this procurement.

Please, see attached:

Fund: 101-1000-446132 Non-Capital Items

Total Cost: \$25,414.59

Respectively,

Leticia Guerra,
Chief Procurement Officer

ROLL CALL APPROVED OR DENIED:

Mayor, Rolf Hechler: Approved: ____/Denied: ____
Mayor Pro Tem, Amanda Forrister: Approved: ____/Denied: ____
Commissioner, Destiny Mitchell: Approved: ____/Denied: ____
Commissioner, Merry Jo Fahl: Approved: ____/Denied: ____
Commissioner, Ingo Hoepfner: Approved: ____/Denied: ____

Final Motion: Approved: ____/Denied: ____

Date: _____ Purchase Order No. # _____

**PURCHASE REQUISITION APPROVAL 2024-25 Fiscal Year
COMMISSION MEETING 10/23/2024**

[illegible]

\$	25,414.59
----	-----------

ATTEST:

Angela Torres, Clerk-Treasurer

Date _____

Rolf Hechler, Mayor

Date _____



REQUISITION

Requisition #: 93297

Date: 10/18/2024

Vendor #: 9110

ISSUED TO: POWERON TECHNOLOGY SERVICES I
8801 JEFFERSON ST NE BUILDING C
ALBUQUERQUE, NM 87113-

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 COMMISSION CHAMBERS AUDIO VISUAL		0.00 101-1000-44613	25,414.59
PO Description: AUDIO/VISUAL SYSTEM FOR COMMISSION CHAMBERS Detailed Description: POWERON TECHNOLOGY SERVICES PREPARED FOR MIKE TORRES PREPARED BY ANELIUS HOLLAND OF POWERON ~QUOTE# AAAQ1199 ~NM STATE PRICE AGREEMENT# 30-00000-23-000800CI ~AUDIO AND VISUAL SYSTEM FOR THE CITY				

Authorized By: _____

SUBTOTAL:	25,414.59
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	25,414.59



You didn't go into business to manage your computers, we did!



Available Contracts for Purchasing:

NM State Contract# 30-00000-23-00080CI

CES Contract# 2024-14-C111-ALL

ACES Contract: RFP 24-02 AAIC

PREPARED FOR

City Of Truth Or Consequences

Mike Torres

2800 South Broadway Street

Truth or Consequences, NM 87901

United States

BY _____

Anelius Holland

aholland@poweron-it.com

505-899-4600



Our clients guarantee business with us because we did!

QUOTE

QUOTE #:	AAAQ1199
DATE:	Jul 24, 2024

Prepared For:

Mike Torres
City Of Truth Or Consequences
2800 South Broadway Street
Truth or Consequences, NM 87901
United States

Phone

Prepared By:

Anelius Holland
Account Executive
aholland@poweron-it.com
505-899-4600 ext 204

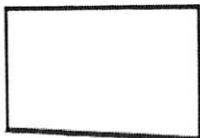
P.O. Number	Payment Terms	Valid Through

Here is the quote you requested.

Qty	Description	Manufacturer	Part Number	Unit Price	Ext. Price
1	Epson PowerLite L260F 3LCD Projector - 21:9 - Ceiling Mountable - 1920 x 1080 - Front - 1080p - 20000 Hour Normal Mode - 30000 Hour Economy Mode - Full HD - 2,500,000:1 - 4600 lm - HDMI - USB - Wireless LAN - Network (RJ-45) - Class Room, Conference Room, Presentation, Education - 3 Year Warranty	Epson Corporation	V11HA69020	\$1,450.60	\$1,450.60



1	Da-Lite Model C 92" Projection Screen - 16:9 - High Contrast Matte White - 45" x 80" - Wall/Ceiling Mount	Legrand Group	92686	\$689.80	\$689.80
---	---	---------------	-------	----------	----------



Qty	Description	Manufacturer	Part Number	Unit Price	Ext. Price
1	Chief KITPF018024 Projector Ceiling Mount Kit - 50 lb - Black	Legrand Group	KITPF018024	\$425.65	\$425.65
					
1	32x32 Audio Matrix Processor. 12x12 local analog I/O, up to 128x128 audio networking, 96kHz FPGA core with ultra-low latency, compatible with IP1, IP6, IP8 remote controllers, 1U		AH-AHM-32	\$2,115.78	\$2,115.78
1	Acoustic Echo Cancellation (AEC) module for AHM-32, 12 channels of AEC, 150ms FIR Adaptive Filter, Far-end AGC, Residual echo NLP		AH-M-AHM-32-AEC-A	\$1,105.43	\$1,105.43
1	10-inch control touch panel for desktop or wall mount use. Can operate as fixed control devices or complementing a BYOD solution.		AH-CC-10	\$1,540.05	\$1,540.05
1	Desktop stand for CC-7 or CC-10		AH-CC-STN	\$180.24	\$180.24
1	SQ Dante 32A—32 Dante Card for SQ & AHM		AH-M-SQ-SDANTE32-A	\$808.30	\$808.30
2	Dante AVIO USB IO Adapter 2x2		ADP-USB-AU-2x2	\$199.50	\$399.00
6	Professional Series 8" In-Ceiling Speakers - Pair		PS-C83RT WHITE	\$351.87	\$2,111.22
3	Square Adapter PS-C83R/83RW/PS-C83R/83RW/PS-C63RTL White with Grille		PS-C83R/83RW/PS-C63RTL 3RTL	\$49.00	\$147.00
1	LEA Professional Connect CONNECT 352 Amplifier - 350 W RMS - 2 Channel - Black - 0.1% THD - 20 Hz to 20 kHz - Wireless LAN - Ethernet	LEA Professional	CONNECT 352	\$1,513.20	\$1,513.20
	 Introducing the world's first Internet of Things- (IoT) enabled, professional-grade amplifier family - the NETWORKCONNECT SERIES. Perfectly suited for small to medium scale installations, these two, four, and eight channel amps feature direct HiZ (70V or 100V) or LoZ selectable by channel. With three ways to connect, you can engage the built in Wi-Fi access point, connect to the venue's Wi-Fi, or use the FAST Ethernet to connect to any local area network via Cat5 or Cat6 cable.				
1	10-Port RJ45 switch (1G) w/ Intelligent AV Processing, 8 PoE ports & 2 SFP Ports DSP w/ Crossovers, IoT Device with built in Wi-Fi Hotspot, Wi-Fi or FAST Ethernet connectivity. Highly Efficient Power Supply with Class D Output Stage		AC-MXNET-SW10	\$1,513.20	\$1,513.20
7	Cardioid-18" Desktop Gooseneck Condenser Microphone, Attached 10' XLR Cable, Logic Functions, Programmable Switch and LED Indicator, Attached			\$328.63	\$2,300.41

Qty	Description	Manufacturer	Part Number	Unit Price	Ext. Price
	Desktop Base		MX418D/C		
2	Dual Wireless Vocal System with SM58		SLXD24D/SM58-J52	\$1,273.13	\$2,546.26
1	Wireless Vocal System with SM58		SLXD24/SM58-J52	\$680.63	\$680.63
1	Five-way active antenna splitter and power distribution system for QLX D*, ULX*, ULX-D*, SLX*, and BLX* (BLX4R only) receivers. (470-		UA844+SWB	\$698.75	\$698.75
2	1/2 Wave Receiver Antenna		UA8-470-636	\$30.19	\$60.38
1	Professional Grade Wireless Extender for HDMI - Transmitter - US/Canada version		60-1490-02	\$591.66	\$591.66
1	Professional Grade Wireless Extender for HDMI - Receiver - US/Canada version		60-1493-21	\$641.66	\$641.66
1	Over Floor Base and Cover Raceway (8')		OFRBC-8R	\$567.15	\$567.15
1	Ultra Flexible High Speed HDMI Cable - 1.5'		26-663-02	\$35.93	\$35.93
1	Ultra Flexible High Speed HDMI Cable - 3'		26-663-03	\$43.10	\$43.10
1	Ultra Flexible High Speed HDMI Cable - 6'		26-663-06	\$61.79	\$61.79
1	Ultra Flexible High Speed HDMI Cable - 9'		26-663-09	\$70.40	\$70.40
1	3.5 mm Male to Male Stereo Audio cable, 6'		26-571-03	\$5.75	\$5.75
1	Miscellaneous cable management supplies		CMS	\$31.25	\$31.25
24	Installation and testing of all new hardware and cables		A/V Technician	\$90.00	\$2,160.00
1	Travel and Lodging Costs for 2 Technicians		A/V Technician	\$920.00	\$920.00

Please contact me if I can be of further assistance.

SubTotal	\$25,414.59
Tax	\$0.00
Shipping	\$0.00
TOTAL	\$25,414.59



**State of New Mexico
General Services Department
Purchasing Division**

Statewide Price Agreement Amendment Cover Page

Awarded Vendor:

0000086388

Poweron Technology Services

PO BOX 52154

Albuquerque, NM 87181

Contact: Anthony Brown

Email: tbrown@poweron-it.com

Telephone No.: (505) 899-4600 ext. 200, (505) 944-6382

Contract Number: 30-00000-23-00080CI

Amendment No.: One

Term: February 9, 2024 – February 8, 2028

Ship To:

All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Procurement Specialist: Yulastuti Wulandari *YW*

Telephone No.: (505) 469-2248

Email: Yulastuti.Wulandari@gsd.nm.gov

Invoice:

As Requested at Time of Order

**For questions regarding this contract please contact:
Lucy Vigil-Rendon (505) 629-2297**

Title: Information Technology Professional Services

This amendment is to be attached to the respective Contract and become a part thereof.

This amendment is issued to reflect the following effective immediately:

Revise Article 33 – Additional Provisions

See Amendment No. 1 for details.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

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

For Local Government Division use only:

ENTITY NAME: City of Truth or Consequences
FISCAL YEAR: 2024-25 10/23/2024
DFA Resolution Number: 18 24/25
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	101-1099-36410	NM STO Investment Income	Revenue	\$ 5,000.00	\$ 45,000		\$ 50,000	General Fund Tower Leases - Increase to account for interest FY 25
								\$ -	
2	101	101-1000-44613	Clerk Audio- Non Capital Items	Expense	\$ -	\$ 26,000		\$ 26,000	Gov. Body -Video/Audio Commision Chambers
								\$ -	
3	101	101-1004-44606	Finance -Office Supplies	Expense	\$ 4,500.00	\$ 1,500		\$ 6,000	Finance - Short Fall
3	101	101-1004-44613	Finance -Non Capital Items	Expense	\$ -	\$ 20,000		\$ 20,000	Finance - NM Correction Industry
3	101	101-1004-48599	Finance -Other Contractual Services	Expense	\$ 12,500.00	\$ 9,650		\$ 22,150	Finance - Back Ground Checks
								\$ -	
4	101	101-1099-38372	PD -Insurance Recovery	Revenue	\$ -	\$ 7,459		\$ 7,459	PD - Insurance claim for Dodge 2024
4	101	101-1007-47420	PD -Maint. Vehicle/Equip	Expense	\$ 53,881	\$ 7,459		\$ 61,340	PD - Insurance claim for Dodge 2024
								\$ -	
5	321	321-7042-31375	WISPI 2 Federal Grants	Revenue	\$ -	\$ 7,227,000		\$ 7,227,000	USDA Water System Performance Improvements 2 (WISPI 2)
5	321	321-7042-38387	WISPI 2 Loan Proceeds	Revenue	\$ -	\$ 2,673,000		\$ 2,673,000	USDA Water System Performance Improvements 2 (WISPI 2)
5	321	321-7042-80860	WISPI 2 Infrastructure	Expense	\$ -	\$ 9,900,000		\$ 9,900,000	USDA Water System Performance Improvements 2 (WISPI 2)
								\$ -	

ATTEST:

Angela Torres, Clerk-Treasurer (Date)

Rolf Hechler, Mayor

(Date)



City of Truth or Consequences

505 Sims Street

Truth or Consequences, New Mexico 87901

City (575) 894-6673 • Fax (575) 894-7767

October 21, 2024

Dear Mayor Hechler, Mayor Pro-Tem Forrister and City Commissioners:

RE: WATER SYSTEM IMPROVEMENTS 2 ENG. AGREEMENT

The COMMUNITY DEVELOPMENT DEPARTMENT would like to utilize their INFUSTRUCTURE FUND, to BEGIN PHASE 2 on THE FINAL EXECUTION OF THE ON CALL AGREEMENT. This item is subject to approval based on the requirement for approvals over the \$20,000 Dollar threshold.

I am requesting our City Commission to publicly approve this purchase and allow me to move forward with this procurement.

Please, see attached:

Fund: 321-7042-80860- INFASTRUCTURE

Total Cost: \$1,065,983.36

Respectively,

Leiandra Guerra,
Chief Procurement Officer

ROLL CALL APPROVED OR DENIED:

Mayor, Rolf Hechler: Approved: ____/Denied: ____

Mayor Pro Tem, Amanda Forrister: Approved: ____/Denied: ____

Commissioner, Destiny Mitchell: Approved: ____/Denied: ____

Commissioner, Merry Jo Fahl: Approved: ____/Denied: ____

Commissioner, Ingo Hoepfner: Approved: ____/Denied: ____

Final Motion: Approved: ____/Denied: ____

Date: _____ Purchase Order No. # _____

**PURCHASE REQUISITION APPROVAL 2024-25 Fiscal Year
COMMISSION MEETING 09/24/2025**

Number	Vendor Name	Description	Requested By	Department	Total Amount	Procurement Type
93283	WILSON & COMPANY	WATER SYSTEM IMPROVEMENTS 2 ENG AGREEMENT	TRACI ALVEREZ	COMMUNITY DEVELOPMENT	\$ 1,065,983.36	GRANTS,LOAN,PEN DING BAR& FINAL ADOPTION PENDING COMMISSION APPROVAL
					\$ 1,065,983.36	

ATTEST:

Angela Torres, Clerk-Treasurer

Date _____

Rolf Hechler, Mayor

Date _____



REQUISITION

Requisition #: 93283

Date: 10/16/2024

Vendor #: 7982

ISSUED TO: WILSON & COMPANY INC ENGINEER
4401 MASTHEAD ST NE SUITE 150
ALBUQUERQUE, NM 87109-

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 WSPI - 2 ENGINEERING AGREEMENT USE		0.00 321-7042-80860	1,065,983.36
PO Description: WATER SYSTEM IMPROVEMENTS 2 ENG AGREEMENT				
Detailed Description:				
**NEED CORRECT LINE ITEM FROM KERIN - EMAILED 10/16 - MAY NEED A BAR - WAITING ON KERIN				
PENDING COMMISSION APPROVAL FOR CONTRACT (TO COMMISSION 10-23-2024)				
PROCURRED THRU ON CALL RFP - WAITING ON FINAL EXECUTION OF ON CALL AGREEMENTS				

Authorized By: _____

SUBTOTAL:	988,165.34
TOTAL TAX:	77,818.02
SHIPPING:	0.00
TOTAL	1,065,983.36

From: Traci Alvarez

Sent: Wednesday, October 16, 2024 12:35 PM

To: Kerin Salcedo <ksalcedo@torcnm.org>

Cc: Holguin, Jocelyn <jholguin@torcnm.org>; Gonzales, Angela <agonzales@torcnm.org>

Subject: Water System Project Improvements 2

Good Morning Kerin,

Did we budget for the WSPI-2 Project? If so, can you please provide me the line item associated with it, I haven't been able to locate it in the Tyler System. If not, can we please plan this for a BAR, and in the meantime can I get a line item to apply a requisition to pending BAR and Commission approval? I am attaching the LOC from USDA with the breakdown of the total amount awarded (\$9,900,000.01). This will pass thru the Bank of the SW just like the USDA WSPI-1 Project (Final Adoption of the Loan Ordinance will be heard at the meeting on 10/23 – I have attached the draft for your reference. The Loan ordinance is for predevelopment only at this time in the amount of \$1,065,984 – once design is complete we will go back to BOSW for the full amount to pay off the predevelopment loan and move into construction. Once the ordinance is approved, I will provide you a fully executed copy. . Let me know if you have any questions.

Traci

Traci Alvarez

Assistant City Manager

City of Truth or Consequences

505 Sims Street

Truth or Consequences, NM 87901

(575) 952-0565

talvarez@torcnm.org





From: Kerin Salcedo <ksalcedo@torcnm.org>
Sent: Wednesday, October 16, 2024 4:10 PM
To: Traci Alvarez <talvarez@torcnm.org>
Cc: Holguin, Jocelyn <jholguin@torcnm.org>; Gonzales, Angela <agonzales@torcnm.org>
Subject: RE: Water System Project Improvements 2

Hi Traci.

We did not do a BAR for this. I will put this on the BAR for next week's meeting. This project will be through Bank of the Southwest right?

Thank You,

Kerin Salcedo
Accounting Officer
City of Truth or Consequences
575-740-7336

From: Traci Alvarez <talvarez@torcnm.org>
Sent: Wednesday, October 16, 2024 12:36 PM
To: Kerin Salcedo <ksalcedo@torcnm.org>
Cc: Holguin, Jocelyn <jholguin@torcnm.org>; Gonzales, Angela <agonzales@torcnm.org>
Subject: RE: Water System Project Improvements 2

Sorry forgot to attach the draft ordinance!

Traci Alvarez
Assistant City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901
(575) 952-0565
talvarez@torcnm.org



Guerra, Leiandra

From: Kerin Salcedo
Sent: Thursday, October 17, 2024 10:10 AM
To: Traci Alvarez
Cc: Holguin, Jocelyn; Gonzales, Angela; Guerra, Leiandra
Subject: RE: Water System Project Improvements 2
Attachments: My Requisition Form.pdf

Hi Traci,

I created the accounting lines for the WISPI 2:

321-7042-31375 WISPI 2 Federal Grants Rev _____
321-7042-38387 WISPI 2 Loan Proceeds Rev
321-7042-80860 WISPI 2 Infrastructure Exp

I also changed the requisition to the correct accounting line item. I have attached for your records.

Thank You,

Kerin Salcedo
Accounting Officer
City of Truth or Consequences
575-740-7336

From: Traci Alvarez <talvarez@torcnm.org>
Sent: Wednesday, October 16, 2024 4:11 PM
To: Kerin Salcedo <ksalcedo@torcnm.org>
Cc: Holguin, Jocelyn <jholguin@torcnm.org>; Gonzales, Angela <agonzales@torcnm.org>
Subject: RE: Water System Project Improvements 2

Thank you Kerin,
Yes it will be thru BOSW. I have input a requisition under my professional services and placed it on hold until a line item is received and all approval have been met.
Traci

Traci Alvarez
Assistant City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901
(575) 952-0565
talvarez@torcnm.org



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.8

SUBJECT: Re-Appointment of Chris Sisney to the Planning & Zoning Commission.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: October 18, 2024

SUBMITTED BY: Angela A. Torres, City Clerk

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

Chris Sisney is a current member of the Planning & Zoning Commission. His term expires at the end of this month, and he wishes to serve another 2 year term on the board.

Recommendation:

Approval of re-appointment to the board.

Attachments:

-
- Board Member application.

Fiscal Impact (Finance): No

-

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 10-23-2024



City of Truth or Consequences

City Boards Application

Name: CHRIS SISNEY Address: 952 VEATER
Phone: 575 740 5802 Email: CSISNEY@EARTHLINK.NET

I am interested in serving as a member of one the following Boards:

- | | | |
|--|--|---|
| ☐ Airport Advisory Board | ☐ Public Arts Advisory Board | ☐ Golf Course Advisory Board |
| ☐ Public Utility Advisory Board | ☐ Library Advisory Board | ☐ Recreation Advisory Board |
| ☐ Lodger's Tax Advisory Board | ☒ Planning & Zoning Commission | ☐ Impact Fee Board |
| ☐ Other: _____ | | |

My qualifications are:

Currently on the P+Z Commission. I would like to
continue my service

I hereby certify that my appointment to this board neither creates, nor should create, any conflict of interest for myself or the Board. I further confirm that any possible conflict of interest that may arise will be reported to the Board and the City Clerk.

Signature: _____

Date: _____

20 SEP 24



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.9

SUBJECT: Re-Appointment of Esther Luchini to the Planning & Zoning Commission.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: October 18, 2024

SUBMITTED BY: Angela A. Torres, City Clerk

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

Esther Luchini is a current member of the Planning & Zoning Commission. Her term expires at the end of this month, and she wishes to serve another 2 year term on the board.

Recommendation:

Approval of re-appointment to the board.

Attachments:

-
- Board Member application.

Fiscal Impact (Finance): No

-

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 10-23-2024



City of Truth or Consequences

City Boards Application

Name: Esther Luchini Address: 80 Dove Lane Monticello NM 87439
Phone: 575 740 7372 Email: esluchini@yahoo.com

I am interested in serving as a member of one the following Boards:

- ☐ Airport Advisory Board ☐ Public Arts Advisory Board ☐ Recreation/Golf Course Advisory Board
☐ Public Utility Advisory Board ☐ Library Advisory Board ☐ Impact Fee Board
☐ Lodger's Tax Advisory Board ☒ Planning & Zoning Commission
☐ Other: _____

My qualifications are:

Current Member

I hereby certify that my appointment to this board neither creates, nor should create, any conflict of interest for myself or the Board. I further confirm that any possible conflict of interest that may arise will be reported to the Board and the City Clerk.

Signature: _____

Date: _____

5 Sept 2024



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.10

SUBJECT: Re-Appointment of Susan Buhler to the Planning & Zoning Commission.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: October 18, 2024

SUBMITTED BY: Angela A. Torres, City Clerk

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

Susan Buhler is a current member of the Planning & Zoning Commission. Her term expires at the end of this month, and she wishes to serve another 2 year term on the board.

Recommendation:

Approval of re-appointment to the board.

Attachments:

-
- Board Member application.

Fiscal Impact (Finance): No

-

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 10-23-2024



City of Truth or Consequences

City Boards Application

Name: SUSAN E. BUHLER Address: P.O. BOX 71 TOLL, N.M. 87901
Phone: 281-615-9654 Email: SUZYJET@OUTLOOK.COM

I am interested in serving as a member of one the following Boards:

- | | | |
|--|--|---|
| ☐ Airport Advisory Board | ☐ Public Arts Advisory Board | ☐ Golf Course Advisory Board |
| ☐ Public Utility Advisory Board | ☐ Library Advisory Board | ☐ Recreation Advisory Board |
| ☐ Lodger's Tax Advisory Board | ☒ Planning & Zoning Commission | ☐ Impact Fee Board |
| ☐ Other: _____ | | |

My qualifications are:

I AM RE-APPLYING FOR A POSITION ON THE
PLANNING AND ZONING COMMISSIONS BOARD.
MY STRENGTHS LIE IN BEING A BUSINESS OWNER
FOR TEN YEARS HAVING GOOD COMMUNICATION,
MANAGEMENT AND PEOPLE SKILLS.
SINCE JULY 25, 2022 I HAVE SERVED ON THE
COMMISSION. IT IS MY DESIRE TO SERVE
ANOTHER TERM, FOLLOWING THE CITY CODES
AND GIVING SOUND RECOMMENDATIONS TO
THE CITY COUNCIL MEMBERS AND IT'S CITIZENS.
THANK YOU!

I hereby certify that my appointment to this board neither creates, nor should create, any conflict of interest for myself or the Board. I further confirm that any possible conflict of interest that may arise will be reported to the Board and the City Clerk.

Signature: Susan E. Buhler Date: 9-13-24



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 23, 2024

Agenda Item #: G.11

SUBJECT: Approval of the 2025 City Holiday Schedule

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: October 18, 2024

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

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

This is to establish, designate, and declare legal holiday closures for 2025.

Recommendation:

Approval of 2025 City Holiday Schedule

Attachments:

- 2025 City Holiday Schedule
- -

Fiscal Impact (Finance): N/A

-

Legal Review (City Attorney): N/A

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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 10-23-2024

POST THROUGH DECEMBER 31, 2025

City of Truth or Consequences City Manager's Office

MEMORANDUM

October 23, 2024

TO: ALL DEPARTMENT HEADS/SUPERVISORS/MANAGERS

FROM: _____
Rolf Hechler, Mayor

RE: **HOLIDAY SCHEDULE – 2025**

The City of Truth or Consequences will observe the following legal public holidays in **2025**. Please notify your employees that City Offices will be closed these days.

New Year's Day/Eve	will be observed on Wednesday	January 1, 2025
Martin Luther King Jr. Day	will be observed on Monday	January 20, 2025
Presidents Day	will be observed on Monday	February 17, 2025
Spring Day – 4 Hours	will be observed on Friday	April 18, 2025
Fiesta Day – 4 Hours	will be observed on Friday	May 2, 2025
Memorial Day	will be observed on Monday	May 26, 2025
Juneteenth	will be observed on Thursday	June 19, 2025
Independence Day	will be observed on Friday	July 4, 2025
Labor Day	will be observed on Monday	September 1, 2025
Indigenous People Day	will be observed on Monday	October 13, 2025
Veterans Day	will be observed on Tuesday	November 11, 2025
Thanksgiving Day	will be observed on Thursday	November 27, 2025
Day after Thanksgiving	will be observed on Friday	November 28, 2025
Christmas Eve – 4 Hours	will be observed on Wednesday	December 24, 2025
Christmas Day	will be observed on Thursday	December 25, 2025
Day after Christmas	will be observed on Friday	December 26, 2025
New Year's Day/Eve	will be observed on Thursday	January 1, 2026