

*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*

CITY COMMISSION

REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, MAY 22, 2024; TO BEGIN IMMEDIATELY FOLLOWING THE WORKSHOP.

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. PRESENTATIONS (5 Minute Rule Applies)

1. HSHS SkillsUSA Proclamation and Certificates. Commissioner Mitchell
2. Lifesaving award presented to Sara Marta. Mayor Hechler

D. PUBLIC COMMENT (3 Minute Rule Applies)

E. REPORTS

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

F. PUBLIC HEARINGS (5 Minute Rule Applies)

1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 754 Authorizing the issuance of the City of Truth or Consequences Joint Utility System Improvements Revenue Bonds. Chris Muirhead, Modrall Sperling
2. Public Hearing/Public Input: Review and Discuss Infrastructure Capital Improvement Projects for the City of Truth or Consequences. Assistant City Manager Alvarez

G. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 48 23/24 Approval of Audit Results for 2022-2023. Chris Garner, Pattillo, Brown, & Hill, LLP

H. NEW BUSINESS

1. Discussion/Action: Approval of Audit Contract FY 2023-24. City Manager Gonzales
2. Discussion/Action: Sierra County Swim Team Agreement for the 2024 season. OJ Hechler, Community Services Director
3. Discussion/Update: PD Update. Chief of Police Tavizon
4. Discussion/Action: Approval of Purchase Requisitions over \$20,000. Assistant City Manager Alvarez
5. Discussion/Action: Variance request at 2090 S. Broadway. Assistant City Manager Alvarez
6. Discussion/Action: Variance requests at 500 N. Date Street for the placement of Shipping Containers. Assistant City Manager Alvarez
7. Discussion/Action: Special Use Permit -Kennel Permit Annual Renewal 3500-3710 E Third. Assistant City Manager Alvarez
8. Discussion/Action: Notice of Award of Engineering Agreement for the City of Truth or Consequences CDBG Project No. 22-C-NR-I-01-G-01 and Contract Approval. Assistant City Manager Alvarez
9. Discussion/Action: Contract Between the City of Truth or Consequences and South-Central Solid Waste Authority. Assistant City Manager Alvarez
10. Discussion/Action: Approval of the Records Inventory List for destruction. City Clerk Torres

I. EXECUTIVE SESSION

1. Purchase, Acquisition, or Disposal of Real Property (Armory) pursuant to 10-15-1(H.8).

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

1. Purchase, Acquisition, or Disposal of Real Property (Armory) pursuant to 10-15-1(H.8).

K. ADJOURNMENT

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

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

NEXT REGULAR CITY COMMISSION MEETING JUNE 12, 2024



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: C.1

SUBJECT: HSHS SkillsUSA Proclamation and certificates.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: May 16, 2024

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

WHO WILL PRESENT THE ITEM: Commissioner Mitchell

Summary/Background:

The HSHS Skills USA team began their first chapter this year. The team came home with 10 medals including 3 golds. Nationals will be held in Atlanta at the end of June.

Commissioner Mitchell will present the team with a proclamation and certificates in recognition of their hard work and success.

Recommendation:

None. Presentation only

Attachments:

• -
-

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 5-22-24



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: C.2

SUBJECT: Lifesaving award presented to Sara Marta.
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: May 16, 2024
SUBMITTED BY: Angela A. Torres, City Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Mayor Hechler

Summary/Background:

Award presented to Sara Marta for her heroic actions that helped save a life on Saturday, May 4, 2024.

Recommendation:

None. Presentation only

Attachments:

• -
-

Fiscal Impact (Finance): N/A
\$0.00

Legal Review (City Attorney): N/A
None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -
Continued To: - Referred To: -
☐ Approved ☐ Denied ☐ Other: -
File Name: CC Agendas 5-22-24



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: E.2

SUBJECT: City Commission (Mayor) Reports
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: May 16, 2024
SUBMITTED BY: Angela A. Torres, City Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Mayor Hechler

Summary/Background:

Mayor Report.

Recommendation:

None. Presentation only

Attachments:

• -
-

Fiscal Impact (Finance): N/A
\$0.00

Legal Review (City Attorney): N/A
None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 5-22-24

Colonias Infrastructure Board - 2024 Funding Cycle
Award Recommendations - May 16, 2024

Project #	Applicant	County	Benefitting Colonias	Project Name/Description	Score Total	Amount Requested	Funding Recommendation
WATER INFRASTRUCTURE							
CIF-6441	Truth or Consequences, City of	Sierra	Truth or Consequences	Waterline replacement-design/construct/replace waterlines within the City's water distribution system	77	\$ 4,400,000	\$ 4,400,000
CIF-6419	Enchanted Forest MDWCA	Lincoln	Enchanted Forest MDWCA	New water source, pump house - design/construct a supplemental water supply well, pumphouse and supporting waterlines.	75	\$ 950,000	\$ 950,000
CIF-6443	Tyrone W&WWA	Grant	Tyrone	Water system improvements-construct improvements including remove/replace existing waterlines, services lines, valves, vaults, service connections and tank site improvements	72	\$ 5,697,115	\$ 5,697,115
CIF-6425	La Luz MDWC&MSWA	Otero	La Luz	Well 3 replacement-Construction/replacement of well#3	66	\$ 975,000	\$ 975,000
CIF-6408	Bayard, City of	Grant	Bayard/Hanover	Water system improvements - design and construct a new chlorination disinfection system and rehab existing IMG reservoir.	61	\$ 1,200,800	\$ 1,200,800
CIF-6444	Tyrone W&WWA	Grant	Tyrone	Water tank rehab-design/construct/rehab a 200,000 gallon storage tank.	61	\$ 848,958	\$ 848,958
CIF-6405	Anthony WSD	Dona Ana	Anthony, Chaparral	Meter replacement - construct replacement of district's water meters	59	\$ 2,710,500	\$ 2,710,500
CIF-6432	Mesilla, Town of	Dona Ana	Mesilla	New well & tank-design a new 200k gallon tank, new well and transmission lines	59	\$ 5,216,000	\$ 609,292
CIF-6428	Lower Rio Grande PWWA	Dona Ana	Vado	High Valley waterline replacement-design/construct/replace aging undersized water pipelines and relocate those currently on private property to county ROW.	56	\$ 875,000	\$ 875,000
CIF-6412	Deming, City of	Luna	Deming	Copper Tin waterline replacement-construction of waterline replacement including valves, fire hydrants and services lines to meters	55	\$ 500,000	FY2023 Audit - not yet submitted
CIF-6436	Santa Clara, Village of	Grant	Santa Clara	Water well rehab-design/construct rehabilitation of wells, reservoirs and valves	55	\$ 2,230,000	\$ 2,230,000
CIF-6421	Arenas Valley WDA	Grant	Arenas Valley	North side of USHW180 water improvements-construction/replacement of existing water main.	48	\$ 1,758,000	\$ 1,758,000
CIF-6424	Jal, City of	Lea	Jal	PER water/sewer/storm	48	\$ 400,000	\$ 400,000
CIF-6426	Leasburg MDWCA	Dona Ana	Leasburg	Water system improvements-design/ROW for the new groundwater well, pipeline replacement, valves, fire protection, storage tank rehab, standpipe tank mixing system w/ chlorine injection and SCADA	44	\$ 500,000	\$ 500,000
CIF-6430	Luna County	Luna	Keeler Rd.	People's Water Coop - Design/construct/replacement of aging pipes, storage tanks, and existing water meters.	30	\$ 694,094	\$ 694,094
WASTEWATER INFRASTRUCTURE							
CIF-6413	Deming, City of	Luna	Deming	Poplar Oak street sanitary sewer - construction of approx. 2,770 lf of clay sewer piping, and approx. 4,490 lf of CIPP sewer line rehab.	71	\$ 1,732,000	FY2023 Audit - not yet submitted
CIF-6417	Dona Ana County	Dona Ana	La Mesa, Mesquite, San Miguel, Vado, Del Cerro, Chamberino, Benno, Montana Vista, Las Palmeras	SC WWTP improvements phase 5 - Design improvements to blower room	64	\$ 4,015,181	\$ 500,000
CIF-6415	Dona Ana County	Dona Ana	San Miguel, La Mesa, Mesquite, San Miguel, Chamberino, Berino, Las Palmeras, Montana Vista, Vado/Del Cerro, Salem, Rincon, Union	Manhole rehab improvements-design/construct manhole rehab. Repairs including bypassing, cleaning, structural repairs, epoxy coatings, replace drop inlets, pipe and manhole covers.	62	\$ 500,000	\$ 500,000
CIF-6423	Hidalgo County	Hidalgo	Animas	Animas WW system - construct improvements including the removal/replacement of existing wastewater rail, submersible lift station pump; existing septic tank and lined wastewater evaporation pond.	57	\$ 2,124,885	\$ 2,124,885
CIF-6429	Lower Rio Grande PWWA	Dona Ana	Mesquite and Brazito	Mesquite Lift Station Rehab - Design 10 lift stations w/upgraded pumps, including ROW and land acquisition	55	\$ 4,268,675	\$ 404,003
CIF-6409	Camino Real Regional UA	Dona Ana	Sunland Park	Vacuum lift station replacement-construct replacement of vacuum collection system to include the installation of two pre-packaged lift stations and approx. 4,200 lf of force main	54	\$ 1,971,905	2nd iteration pending availability
CIF-6427	Lordsburg, City of	Hidalgo	Lordsburg	Wastewater improv. Hyw 70 lift station-construct/replacement of approx. 4600 lf of existing force main pipe, tow existing grinder pump and improvements to SCADA system related to existing lift station.	53	\$ 1,075,000	\$ 1,075,000
CIF-6435	San Pablo MDWCA	Dona Ana	San Pablo	Vacuum system improvements-construction of WW collection system including vacuum station rehab, vacuum pump replacement, crane & odor control modification, updated PLC central panel and instrumentation replacements/SCADA	51	\$ 2,432,700	\$ 2,432,700
CIF-6416	Dona Ana County	Dona Ana	Chaparral	Chaparral WW project phase 2B - design WW system including approx. 26,000lf of gravity sewer collection pipelines, 70 manholes and 230 sewer connections including paved roads.	50	\$ 602,000	\$ 602,000

Colonias Infrastructure Board - 2024 Funding Cycle

Award Recommendations - May 16, 2024

[illegible]

T or C Waterline Replacement

2024 Colonias Infrastructure Project Fund - Water and Wastewater Project

FUNDING REQUEST **\$4,400,000**

SCOPE

Design and construct the replacement of failed, leaking, and deteriorated waterlines throughout the City. The project will significantly reduce water loss, increase system resilience, and improve water quality.

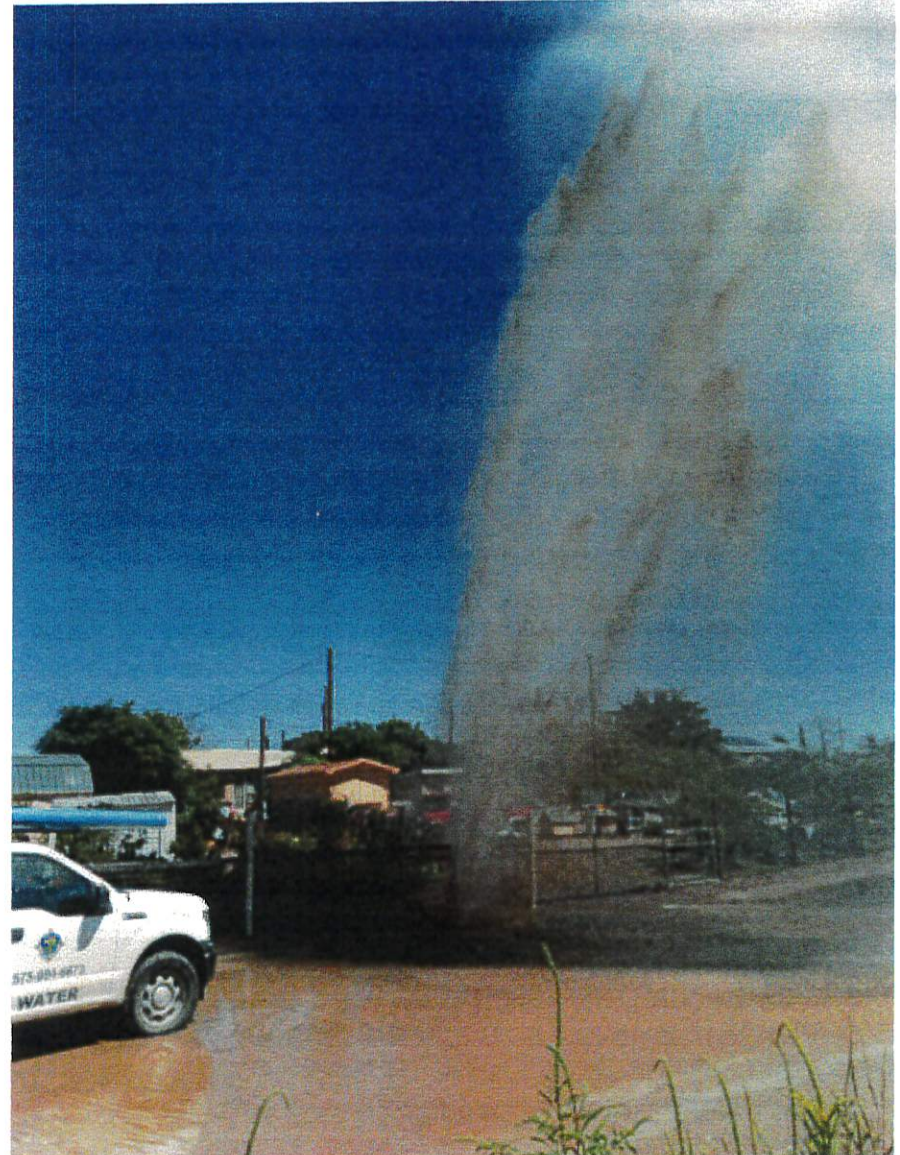
SUMMARY

The existing water system in the City of Truth or Consequences (T or C) comprises distribution network components dating back to the 1930s. Due to age, many of these components are beyond their useful life and are considered to be in poor condition. This has led to an exponential increase in waterline leaks and breaks.

In 2022, the City responded to **more than 400 waterline leaks/breaks, resulting in a water loss in excess of 20 million gallons for the year.** It was reported that in one day, 30 waterlines broke. As the system continues to fail, water in some parts of the city could be shut off for hours at a time, further disrupting the quality of life for nearly 6,000 residents. It also threatens operations at the city's public schools, nursing home, regional hospital, and public businesses. Last year, schools were forced to close without warning several times while repairs were being made at the New Mexico State Veterans' Home.

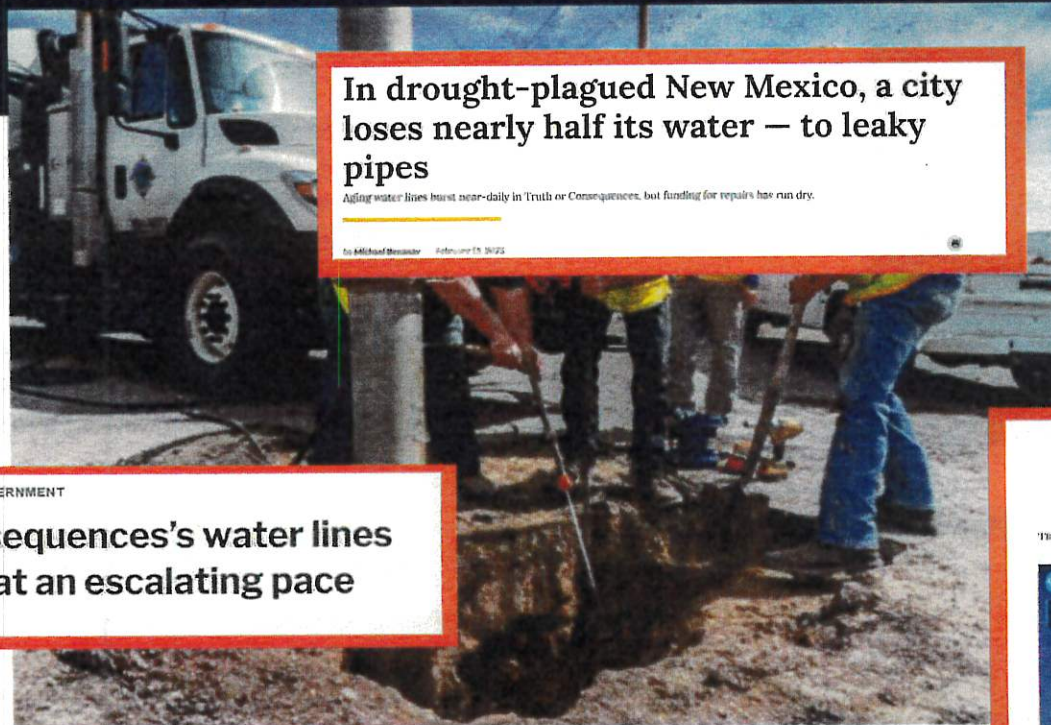
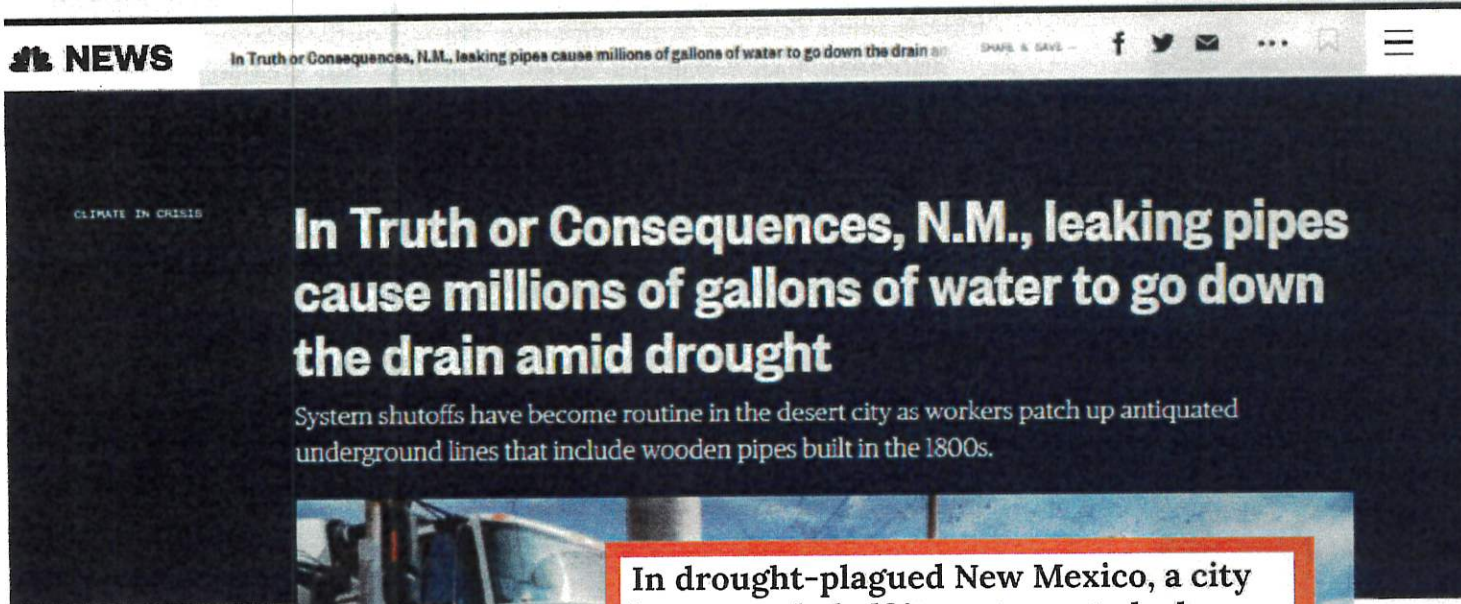
Improvements for the proposed project include replacing the waterlines designated as "emergency" with 6-inch, 8-inch, and 14-inch pipes, along with all new appurtenances. The waterlines will be installed within previously distributed roadway right-of-ways and adjacent to existing water system infrastructure.

The project will reduce water loss, decrease operation and maintenance costs, increase system resiliency, reduce potential for contaminated water, and ensure a safe and adequate supply of water for nearly 6,000 residents within the City's service area, which also includes the Village of Williamsburg.



T or C Waterline Replacement

2024 Colonias Infrastructure Project Fund - Water and Wastewater Project



In drought-plagued New Mexico, a city loses nearly half its water — to leaky pipes

Aging water lines burst near-daily in Truth or Consequences, but funding for repairs has run dry.

by Michael O'Rourke February 15, 2022

TRUTH OR CONSEQUENCES GOVERNMENT

Truth or Consequences's water lines are breaking at an escalating pace

by Kathleen Sloan | March 9, 2021



Truth Or Consequences, NM, losing its water to leaks

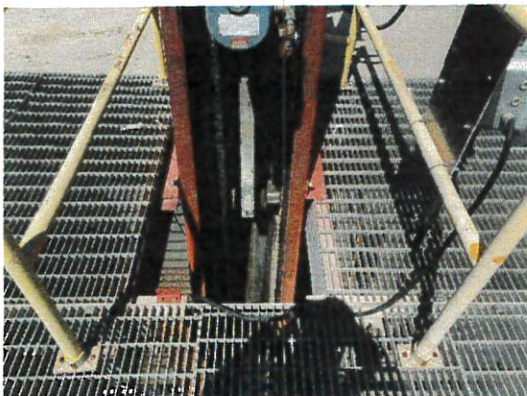
The town of Truth Or Consequences has water infrastructure, some of which is nearly a century old, and the leaking lines waste half the town's total water supply.



Workers repair a pipe Wednesday in Truth or Consequences, N.M., which lost 43% of its water supply last year because of leaking pipes, city says it cannot afford to fix permanently. Photo: Robin Fox/NBC News

WWTP Bar Screen Replacement

2024 Colonias Infrastructure Project Fund - Water and Wastewater Project



FUNDING REQUEST \$1,250,000

SCOPE

Design and construct the replacement of the inoperable mechanical bar screen at the City's Wastewater Treatment Plant (WWTP).

SUMMARY

On July 26, 2020, the City of Truth or Consequences (T or C) experienced a significant rainstorm that caused severe flooding throughout the city and damaged several critical components at the WWTP. In August 2020, the City hired a consultant to complete a field assessment at the WWTP to assess the damage from the rainstorm event.

The "Wastewater Plant UV Disinfection System & Mechanical Bar Screen Field Assessment" report identified that the mechanical bar screen rake was damaged during the storm and is at the end of its useful life. The mechanical bar screen is a critical piece of equipment at the WWTP, as it removes debris (e.g., rags and trash) from entering the facility. The rake assembly of the mechanical bar screen is approximately 23 feet long and extends 13 feet below the operating deck to the influent channel where the bar screen is located.

The damage to the bar screen rake has made automatic cleaning impossible, requiring manual cleaning by the City's operators. This results in additional expenses and a permit-required confined space for staff. The project will replace the damaged mechanical bar screen with an updated model capable of handling higher flows with a tighter screen gap, allowing for greater debris removal.

PROJECT URGENCY

The plant requires operators to physically enter a permit-confined space, exposing them to potential health threats from raw wastewater. Due to the conditions caused by the failed bar screen, the City received a visit and citation from NMED's OSHA Safety Compliance Officer. The City has since implemented additional safety precautions to avoid further citations. The replacement of the bar screen will eliminate current safety issues.

WWTP Bar Screen Replacement

2024 Colonias Infrastructure Project Fund - Water and Wastewater Project





CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: F.1

SUBJECT: Public Hearing/Discussion/Action -Series 2024 General Obligation bonds

DEPARTMENT: Community Development

DATE SUBMITTED: May 16, 2024

SUBMITTED BY: Angela Torres

WHO WILL PRESENT THE ITEM: Chris Muirhead

Summary/Background: The proposed Bond Ordinance authorizes the issuance of general obligation bonds in the par amount of \$790,000. The general obligation bonds were approved at an election on November 8, 2022 in the total amount of \$3,000,000. The City previously issued the first series of general obligation bonds related to the \$3,000,000 approved amount in 2023 in the amount of \$790,000. The debt service is paid through the collection of ad valorem property taxes. The bond proceeds will be used for improvements to streets and water/wastewater system.

Recommendation:

Publication was approved on 4/24/2024. The ordinance will now be presented for a public hearing and final adoption. -

Attachments:

- Bond Ordinance
-

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-22-24

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City Manager*

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, May 22, 2024, to receive additional input regarding the following:

Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 765 Series 2024 General Obligation Bonds.

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 atorres@torcnm.org should you have any questions regarding this Public Hearing.

The agenda may be obtained on Friday, May 17, 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, May 2, 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 ____ day of May, 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. 765

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, GENERAL OBLIGATION BONDS, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$790,000, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF, AND SECURITY FOR, PAYMENT; PROVIDING FOR THE AWARD AND SALE OF THE BONDS TO THE PURCHASER AND THE PRICE TO BE PAID BY THE PURCHASER FOR THE BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

WHEREAS, at a general obligation bond election duly called and held for the City of Truth or Consequences, New Mexico, (the "City") on the 8th day of November, 2022, the electors of the City authorized the City Commission (the "Commission") to contract bonded indebtedness on behalf of the City and upon the credit thereof by issuing general obligation bonds of the City to secure funds for the following purpose (the "Project") in the following amount:

<u>Purposes:</u>	<u>Amount Authorized At Election</u>	<u>Amount Previously Issued</u>	<u>Amount To Be Issued</u>
Laying off, opening, constructing, repairing, and otherwise improving municipal alleys, streets, public roads and bridges, or any combination thereof	\$1,000,000	\$270,000	\$270,000
enlarging, improving or extending the City's water and wastewater system	\$2,000,000	\$520,000	\$520,000

WHEREAS, the Commission has determined and does hereby determine that it is necessary and in the best interest of the City and the inhabitants thereof that the \$790,000 general obligation bonds authorized at the election (the "Bonds") be issued at this time; and

WHEREAS, the Commission has determined and hereby does determine to enter into a Bond Purchase Agreement and sell the Bonds to the New Mexico Finance Authority ("Finance Authority"); and

WHEREAS, the Commission has determined and does hereby determine that the Bonds shall be issued at this time under the authority of the New Mexico Constitution and applicable law as hereinafter set forth, and desires to fix the form and details of the Bonds and to provide for the levy of taxes for the payment of the principal of and interest on the Bonds; and

WHEREAS, the net effective interest rate on the Bonds is not more than ten percent (10%) a year; and

WHEREAS, no action or suit has been commenced by any person or corporation contesting the validity of any of the proceedings directed toward the issuance and sale of the Bonds heretofore taken by the Commission and the officers of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF CITY TRUTH OR CONSEQUENCES, NEW MEXICO AS FOLLOWS:

Section 1. All actions heretofore taken by the Commission and the officers and employees of the City directed toward the issuance and sale of the Bonds to secure funds for the purposes stated above be, and the same hereby are, ratified, approved and confirmed, including the sale of the Bonds in the amount of \$790,000 to the New Mexico Finance Authority pursuant to the Bond Purchase Agreement which is hereby approved. The Mayor is authorized to complete and modify the Bond Purchase Agreement consistent with this Ordinance.

Section 2.

A. In order to provide funds for the Project, the Commission, on behalf of the City and upon the full faith and credit thereof, shall issue the City's general obligation bonds maturing and bearing interest as follows:

Amounts <u>Maturing</u>	Years Maturing <u>(August 1)</u>	Interest Rate <u>(Per Annum)</u>
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B. The Bonds shall be dated the date of delivery (herein the "Series Date"), will be issued in one series and shall consist of bonds numbered consecutively from R-1 upward, issuable in the denomination of \$5,000 each or integral multiples thereof (provided that no individual bond will be issued for more than one maturity); shall bear interest from the Series Date to maturity at the rates per annum set forth above for the Bonds, payable to the registered owner thereof, or registered assigns, on February 1, 2025, and semiannually thereafter on February 1 and August 1 in each year in which the Bonds are outstanding and shall mature on August 1 of each year set forth above.

C. The Bonds maturing on and after August 1, 2034 are callable on and after June __, 2034, or on any date thereafter, in whole or in part, at the option of the City at par plus accrued interest, if any, to the date of redemption.

D. The principal of and interest on the Bonds due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the City Finance Director as "registrar/paying agent" (such registrar/paying agent and any successor thereto, the "Registrar/Paying Agent") for the Bonds, upon maturity and upon presentation and surrender thereof at the principal office of the Registrar/Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by said Bond until the principal thereof is paid in full. Payment of interest on the Bonds (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof as of the close of business on the Record Date (defined below) at his address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any interest payment date shall mean the 15th day of the month preceding the interest payment date. The person in whose name any Bond is registered at the close of business on any Record Date with respect to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such interest payment date; but interest on any Bond which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Bonds as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

E. Notice of redemption of the Bonds will be given by the Registrar/Paying Agent by sending a copy of such notice by first-class, postage prepaid mail not less than 30 days prior to the redemption date to the address shown as of the fifth

day prior to the mailing of notice on the registration books by the Registrar/Paying Agent. The City shall give the Registrar/Paying Agent notice of the Bonds to be called for redemption at least 15 days prior to the date that the Registrar/Paying Agent is required to give owners notice of redemption specifying the Bonds and the principal amount to be called for redemption and the applicable redemption dates. The Registrar/Paying Agent's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. The notice will specify the number or numbers and maturity date or dates of the Bonds to be redeemed (if less than all are to be redeemed) the principal amount of any Bond to be redeemed in part, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond or part thereof to be redeemed at the office of the Registrar/Paying Agent the principal amount thereof to be redeemed plus accrued interest, if any, to the redemption date and that from and after such date interest will cease to accrue on the principal amount redeemed. Such notice may be a conditional notice of redemption insofar as the money or securities necessary to pay the redemption price of the Bonds are not required to be on deposit with the Registrar/Paying Agent prior to the giving of notice of optional redemption of the Bonds. If notice is given in the manner provided above, the Bond or Bonds or part thereof called for redemption will become due and payable on the redemption date designated and if an amount of money sufficient to redeem all Bonds called for redemption is on deposit with the Registrar/Paying Agent on the redemption date, the Bonds or part thereof to be redeemed shall be deemed to be not outstanding and will cease to bear or accrue interest from and after such redemption date. Upon presentation of a Bond to be redeemed at the office of the Registrar/Paying Agent on or after the redemption date, the Registrar/Paying Agent will pay such Bond, or portion thereof called for redemption.

Section 3. The Bonds shall constitute the general obligation debt of the City, payable from general ad valorem taxes in amounts sufficient to meet the semi-annual payments of interest and annual payments of principal on the Bonds maturing in each year. The full faith and credit of the City shall be, and hereby is, irrevocably pledged to the payment of the principal of and interest on the Bonds.

Section 4. The Bonds shall bear the facsimile or manual signature of the Mayor and shall be attested by the facsimile or manual signature of the City Clerk-Treasurer and shall bear the facsimile or original seal of the City. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar/Paying Agent. The Bonds bearing the signatures or facsimile signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the City, notwithstanding that before the delivery of the Bonds and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose signatures appear on the Bonds shall have ceased to fill their respective offices. The Mayor and City Clerk-Treasurer may, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures the facsimiles thereof appearing on the Bonds; and, at the time of the execution of the signature certificate, the Mayor and City Clerk-Treasurer may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature

appears upon any of the Bonds. If facsimile signatures are to appear on the Bonds, the Mayor and City Clerk-Treasurer, pursuant to Sections 6-9-1 through 6-9-6, inclusive, NMSA 1978, shall each forthwith file his or her manual signature, certified by him or her under oath, with the Secretary of State of New Mexico; provided that such filing shall not be necessary for any officer where any previous filing shall have application to the Bonds.

No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar/Paying Agent. The Registrar/Paying Agent's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Registrar/Paying Agent, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 5.

A. Books for the registration and transfer of the Bonds shall be kept by the Registrar/Paying Agent, which is hereby appointed by the City as registrar and as paying agent for the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each interest payment date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each interest payment date but such transfer will not include transfer of interest payable on such interest payment date.

B. The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided in this ordinance with respect to payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal

representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

C. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

D. Bonds which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent interest payment date to which interest has been fully paid or provided for in full or, if no interest has been paid, from the Series Date.

E. The officers of the City are authorized to deliver to the Registrar/Paying Agent fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar/Paying Agent pending use as herein provided.

F. Whenever any Bond shall be surrendered to the Registrar/Paying Agent upon payment thereof, or to the Registrar/Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled by the Registrar/Paying Agent, and counterparts of a certificate of such cancellation shall be furnished by the Registrar/Paying Agent to the City.

Section 6. If the Registrar/Paying Agent initially appointed hereunder shall resign, or if the City shall reasonably determine that said Registrar/Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor registrar/paying agent. Every such successor registrar/paying agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, of not less than \$10,000,000.

Section 7. Subject to the registration provisions hereof, the Bonds hereby authorized shall be fully negotiable and shall have all the qualities of negotiable paper, and the registered owner or owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 8. The Bonds shall be in substantially the following form:

[Form of Bond]

REGISTERED

REGISTERED

NO. R-__

\$ _____

UNITED STATES OF AMERICA
STATE OF NEW MEXICO
CITY OF TRUTH OR CONSEQUENCES
SIERRA COUNTY, NEW MEXICO
GENERAL OBLIGATION BONDS
SERIES 2024

Registered Owner: _____

Principal Amount: _____ DOLLARS

Interest Rate

Maturity Date

Series Date

_____% per annum _____ 1, _____, 2024

The City Commission (the "Commission") of the City of Truth or Consequences, New Mexico (the "City"), on the faith, credit and behalf of the City, for value received, hereby promises to pay to the registered owner named above, or registered assigns, the principal amount hereof on the Maturity Date and to pay interest on the principal amount at the Interest Rate on February 1, 2025, and thereafter on February 1 and August 1 of each year (the "Interest Payment Date") from the Series Date to its maturity. The principal of the bonds of the series of which this is one (the "Bonds") and interest due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the City Finance Director as "registrar/paying agent" (such registrar/paying agent and any successor thereto, the "Registrar/Paying Agent") for the Bonds, upon maturity and upon presentation and surrender thereof at the principal office of the Registrar/Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by said Bond until the principal thereof is paid in full. Payment of interest on the Bonds (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each Interest Payment Date (or, if such Interest Payment Date is not a business day, on or before the next succeeding business day), to the registered owner thereof as of the close of business on the Record Date (defined below) at his address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any Interest Payment Date shall mean the 15th day of the month preceding the Interest Payment Date. The person in whose name any Bond is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest

payable thereon on such Interest Payment Date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; but interest on any Bond which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Bonds as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

The Bonds are fully registered and are issuable in denominations of \$5,000 and any integral multiple thereof (provided that no individual bond may be issued for more than one maturity).

The series of Bonds of which this bond is one is limited to the total principal amount of \$790,000 of like tenor except as to number, denomination, maturity date, and interest rate, issued by the City for the purposes of providing funds to (i) lay off, open, construct, repair, and otherwise improve municipal alleys, streets, public roads and bridges, or any combination thereof, (ii) enlarge, improve or extend the City's water and wastewater system, and (iii) pay the costs of issuance of the Bonds. The Bonds are issued under the authority of and in full conformity with the Constitution and laws of the State of New Mexico (particularly Sections 3-30-1 through 3-30-9 NMSA 1978, the provisions of Sections 6-15-1 through 6-15-22 NMSA 1978, and acts amendatory and supplemental thereto), and pursuant to an ordinance of the Commission duly adopted on April 12, 2024 (the "Bond Ordinance").

The Bonds maturing on and after August 1, 2034 are callable on and after June __, 2034, or on any date thereafter, in whole or in part, at the option of the City at par plus accrued interest, if any, to the date of redemption.

Notice of redemption of the Bonds will be given by the Registrar/Paying Agent by sending a copy of such notice by first-class, postage prepaid mail not less than 30 days prior to the redemption date to the address shown as of the fifth day prior to the mailing of notice on the registration books by the Registrar/Paying Agent. The City shall give the Registrar/Paying Agent notice of the Bonds to be called for redemption at least 15 days prior to the date that the Registrar/Paying Agent is required to give owners notice of redemption specifying the Bonds and the principal amount to be called for redemption and the applicable redemption dates. The Registrar/Paying Agent's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. The notice will specify the number or numbers and maturity date or dates of the Bonds to be redeemed (if less than all are to be redeemed) the principal amount of any Bond to be redeemed in part, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond or part thereof to be

redeemed at the office of the Registrar/Paying Agent the principal amount thereof to be redeemed plus accrued interest, if any, to the redemption date and that from and after such date interest will cease to accrue on the principal amount redeemed. Such notice may be a conditional notice of redemption insofar as the money or securities necessary to pay the redemption price of the Bonds are not required to be on deposit with the Registrar/Paying Agent prior to the giving of notice of optional redemption of the Bonds. If notice is given in the manner provided above, the Bond or Bonds or part thereof called for redemption will become due and payable on the redemption date designated and if an amount of money sufficient to redeem all Bonds called for redemption is on deposit with the Registrar/Paying Agent on the redemption date, the Bonds or part thereof to be redeemed shall be deemed to be not outstanding and will cease to bear or accrue interest from and after such redemption date. Upon presentation of a Bond to be redeemed at the office of the Registrar/Paying Agent on or after the redemption date, the Registrar/Paying Agent will pay such Bond, or portion thereof called for redemption.

The Registrar/Paying Agent will maintain the books of the City for the registration of ownership of the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each Interest Payment Date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each Interest Payment Date but such transfer will not include transfer of interest payable on such Interest Payment Date.

The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the

conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

For the punctual payment of the principal of and interest on this bond as aforesaid and for the levy and collection of taxes in accordance with the statutes authorizing the issuance of this bond, the full faith and credit of the City is hereby irrevocably pledged. The Commission has, by the Bond Ordinance, ordered the creation of an interest and sinking fund for the payment of the Bonds. Such fund is to be held in trust for the benefit of the owner or owners of the Bonds.

It is hereby certified, recited and warranted that all the requirements of law have been complied with by the proper officials of the City in the issuance of this bond; that the total indebtedness of the City, including that of this bond, does not exceed any limit of indebtedness prescribed by the Constitution or laws of the State of New Mexico; that provision has been made for the levy and collection of annual taxes sufficient to pay the principal of and the interest on this bond when the same become due. This bond shall not be valid or obligatory for any purpose until the Registrar/Paying Agent shall have manually signed the certificate of authentication hereon.

IN TESTIMONY WHEREOF, the City Commission of the City of Truth or Consequences, New Mexico, constituting the governing board of the City, has caused the seal of the City to be hereto affixed and this bond to be signed and executed with the facsimile or manual signature of the Mayor and subscribed and attested with the facsimile or manual signature of the City Clerk-Treasurer, all as of the Series Date.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

Mayor

[City Seal]

ATTEST:

By _____
City Clerk-Treasurer

[Form of Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds described in the Bond Ordinance and has been duly registered on the registration books kept by the undersigned as Registrar/Paying Agent for the Bonds.

Date of Authentication and Registration: _____, 2024

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

Finance Director, as Registrar/Paying Agent

[End of Form of Certificate of Authentication]

[Form of Assignment]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____ whose social security or tax identification number is _____ the within bond and irrevocably constitutes and appoints _____ attorney to transfer such bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

NOTE: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[End of Form of Assignment]

[End of Form of Bond]

Section 9. When the Bonds have been duly executed and authenticated, they shall be delivered to the lawful purchaser thereof named in Section 1 of this Ordinance. The funds realized from the sale of the Bonds shall be applied solely to (i) lay off, open, construct, repair, and otherwise improve municipal alleys, streets, public roads and

bridges, or any combination thereof, (ii) enlarge, improve or extend the City's water and wastewater system, and (iii) pay the costs of issuance of the Bonds. The purchaser of the Bonds shall in no manner be responsible for the application of or disposal by the City, or any of its officers, of any of the funds derived from the sale thereof.

Section 10. There shall be levied on all taxable property within the City, at the time and in the manner provided by law, in addition to all other taxes, direct annual ad valorem taxes sufficient to pay the principal of and interest accruing on the Bonds promptly as the same shall become due. This Ordinance is hereby declared to be the certificate of the Commission, as to the amount of taxes necessary to be levied for the purposes herein stated and said taxes shall be certified, levied and extended upon the tax rolls and collected in the same manner, at the same time and subject to the same penalties as general state and City taxes are certified, levied and collected. The taxes, when collected, shall be kept by the City in the City's interest and sinking fund for the City's general obligation bonds to be used solely for the purpose of paying the principal of and interest on the City's general obligation bonds as the same become due or mature; provided that nothing herein contained shall be so construed as to prevent the application of any other funds belonging to the City and available for that purpose, to the payment of the Bonds or the interest thereon, as the same become due and upon such payment the levy or levies of tax provided for in this Section may thereupon to that extent be diminished. If the taxes herein provided for shall not be levied or collected in time to pay the interest on or principal of the Bonds as the same become due or mature, then such interest or principal shall be paid from any other funds belonging to the City, which funds may be reimbursed from the taxes herein provided for when the same are collected.

Section 11. The Mayor, City Manager, City Clerk-Treasurer and other officers of the City be and they hereby are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including without limiting the generality of the foregoing, the deposit of the proceeds of the Bonds into an acquisition fund held by the Finance Authority for payment of the costs of the Project and the costs of issuance of the Bonds, the printing of the Bonds, accounting and verification fees, and the execution of such certificates as may be required by the Finance Authority relating to the signing of the Bonds, the tenure and identity of City officials, the receipt of the purchase price of the Bonds from the purchasers and the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity thereof and the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 12. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The Mayor, City Clerk-Treasurer, City Manager and any other officer of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and

estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield, as required, on investment property acquired with those proceeds, (iii) make timely rebate payments, if required, to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor and City Clerk-Treasurer and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

Section 13. Any Bond and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Bond") hereunder when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity, upon redemption, or other) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption), or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to a qualified depository for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Government Obligations which mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment (as verified by a certified or registered public accountant), and when proper arrangements have been made by the City with a qualified depository for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the ad valorem taxes herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Government Obligations.

Any moneys so deposited with the qualified depository may, at the written direction of the City, also be invested in Government Obligations, maturing in the amounts and times required to make payments when due on the Defeased Bonds, and all income from such Government Obligations received by the qualified depository which is not required for the payment of the Defeased Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City for deposit in the interest and sinking fund for payment of principal and interest on the Bonds. The term "Government Obligations" means direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which may be United States Treasury

Obligations such as its State and Local Government Series, which may be in book-entry form.

Section 14. Moneys in any fund not immediately needed may be invested as provided by state law and applicable federal statutes and regulations, provided that the Commission and the City hereby covenant to the purchasers and the holders of the Bonds from time to time that the City will make no use of the proceeds of the Bonds or any funds reasonably expected to be used to pay the principal of or interest on the Bonds which will cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code, as amended, or which would adversely affect the tax status of interest on the Bonds under the Code. This covenant is for the benefit of the purchasers and the holders of the Bonds from time to time.

Section 15. After any of the Bonds have been issued, this Ordinance shall constitute a contract between the City and the holder or holders of the Bonds and shall be and remain irrevocable and unalterable until the Bonds and the interest thereon shall have been fully paid, satisfied and discharged, defeased or until such payment has been duly provided.

Section 16. 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 17. 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 an Ordinance (the "Ordinance") duly adopted and approved by the City Commission of the City of Truth or Consequences, New Mexico, on May __, 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:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, GENERAL OBLIGATION BONDS, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$790,000, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF, AND SECURITY

FOR, PAYMENT; PROVIDING FOR THE AWARD AND SALE OF THE BONDS TO THE PURCHASER AND THE PRICE TO BE PAID BY THE PURCHASER FOR THE BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

The Ordinance directs and authorizes the issuance of the City of Truth or Consequences, New Mexico, General Obligation Bonds, Series 2024 in the aggregate principal amount of \$790,000; approves the sale of the bonds to the New Mexico Finance Authority pursuant to a bond purchase agreement; provides for the form of the bonds; provides for levy of taxes to pay the principal of and interest on the bonds; makes certain covenants with the bond purchaser; and provides other details concerning the bonds. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

[End Form of Notice]

Section 18. All acts and resolutions in conflict with this ordinance are hereby rescinded, annulled and repealed.

[Signature Page Follows]

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF MAY, 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 _____ day of May, 2024.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

MAYOR

[SEAL]

ATTEST:

CLERK-TREASURER



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: F.2

SUBJECT: Discussion/Input – Review and Discuss Infrastructure Capital Improvement Projects for the City of Truth or Consequences

DEPARTMENT: Community Development

DATE SUBMITTED: May 17, 2024

SUBMITTED BY: Traci Alvarez

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

Summary/Background:

Public Hearing is to receive suggestions from the public and commission on projects they would like to see listed on the ICIP 2026-2030

Recommendation:

Receive Public Input

Attachments:

- Public Hearing Notice
- ICIP Information Sheet
-

[Click here to enter text.](#)

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): N/A

[Click here to enter text.](#)

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC agendas 5-22-24



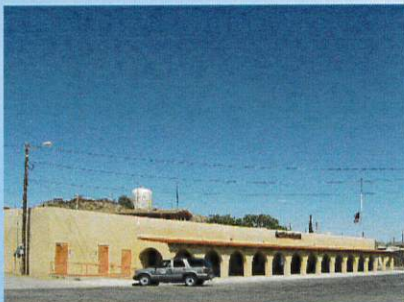
City of Truth or Consequences

ICIP

(Infrastructure Capital Improvement Plan)

What is Infrastructure?

- * Infrastructure refers to the fundamental facilities and systems serving a country, city, or area, including the services and facilities necessary for its economy to function and can be defined as "the physical components of interrelated systems providing commodities and services essential to enable, sustain, or enhance societal living conditions."



What is the ICIP?

- * The local Infrastructure Capital Improvement Plan (ICIP) is a plan that establishes planning priorities for anticipated capital projects.
- * Covers a five year period, 2026-2030
- * Developed, updated and submitted annually to LGD.
- * Includes policy direction, funding time frame, estimated costs, justifications, and details of each infrastructure capital improvement project proposed.
- * ICIP is NOT a Funding Source or a Funding Application

Purpose of the ICIP

- *The ICIP is a tool to showcase priority projects
- *Focus on critical need projects
- *Encourage planning
- *Funding agencies utilize the ICIP, some require it
- *Governor's office uses the ICIP when vetting projects

ICIP Project Requirements

- *Project should create a new fixed asset or enhance an existing fixed asset.
- *Have a life expectancy of at least 10 years
- *Be ready to proceed - not a wish list
- *Have good cost estimates
- *Be over \$10,0000
- *Identify funding resources
- *Regionalize
- *Input and submit all project information by July 12, 2024

Developing the Local Infrastructure Capital Improvement Plan

ID Projects (New & Current Assets) Obtain Costs

- a. Collaborate with all departments
- b. Estimate Cost
- c. Include operating and maintenance expenses

Prioritize - Critical Criteria

- a. Public Health and Safety
- b. Legal liability
- c. Timeline
- d. Emergency
- e. Compliance

Identify Available Funding Sources

- * Legislative Capital Outlay - State Appropriations
- * Community Development Block Grant (CDBG)
- * USDA Rural Development
- * New Mexico Finance Authority
 - * Water Trust Board
 - * Colonias Infrastructure Fund
 - * Drinking Water and Clean Water Revolving Loan Funds
- * Aging and Long-Term Services
- * NMDOT - Streets and Airport
- * Bureau of Reclamation - WaterSMART Water and Energy Efficiency Grants
- * NM Tourism/Outdoor Recreation
- * Local Funds

2026 - 2030 Projects Selection Process

- *Review Current ICIP List and update current projects fully or partially funded
- *Review Department Capital Outlay Lists and update changes and priorities
- *Review Current ICIP List and identify “hard to fund” projects
- *Review Current List for large projects that can be phased
- *Rank Projects and Identify top 3-5 priority projects for Capital Outlay requests

Amanda Forrister
Mayor

Rolf Hechler
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



Destiny Mitchell
Commissioner

Ingo Hoeppner
Commissioner

Angela 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

2026-2030 Infrastructure Capital Improvement Plan

The City of Truth or Consequences wishes to inform all interested parties that a public hearing will be held for public input of projects and purchases that should be included on the City's ICIP (Infrastructure and Capital Improvement Plan).

The ICIP is a five-year plan and helps to plan for the development of capital improvements. Some examples of what the ICIP projects include are streets and roads, sewer collection and treatment, water transmission and storage, airports, public safety projects, vehicles and equipment. Projects must be over \$10,000.00 and a life expectancy of at least 10 years.

The City of Truth or Consequences ICIP hearing will be held on Wednesday, May 22, 2024 during the regularly scheduled City Commission Meeting at the Commission Chambers, 405 W. 3rd St., Truth or Consequences, NM. Residents are encouraged to attend and provide their input on projects they believe should be included.

For information, please contact the City of Truth or Consequences Community Development Department at (575) 952-0565. Please send written comments to City of Truth or Consequences, Community Development Department, 505 Sims Street, Truth or Consequences, NM 87901 or email your comments to talvarez@torcnm.org

Written comments must be received no later than 5pm on June 12, 2024



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: G.1

SUBJECT: Approval of Audit Results for 2022-2023
DEPARTMENT: Finance
DATE SUBMITTED: May 17, 2024
SUBMITTED BY: City Clerk Torres
WHO WILL PRESENT THE ITEM: Chris Garner, Patillo, Brown & Hill LLP

Summary/Background:

Final Audit Approval Resolution

Recommendation:

Recommend approval of the annual audit with Pattillo, Brown & Hill, LLP for the fiscal year end June 30, 2023

Audit is available on the State Auditor Website.

Attachments:

- Final Audit Results
[Click here to enter text.](#)

Fiscal Impact (Finance): Choose an item.

[Click here to enter text.](#)

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 5-22-2024



RESOLUTION NO. 48 23/24

A RESOLUTION APPROVING THE ACCEPTANCE OF THE FY 2022-2023 AUDIT

WHEREAS, the City of Truth or Consequences is required by statute to contract with an independent auditor to perform the required annual audit or agreed upon procedures for Fiscal Year 2022-2023; and,

WHEREAS, the City of Truth or Consequences City Commission has directed the accomplishment of the audit for FY 2022-2023 be completed; and,

WHEREAS, this audit has been completed and presented to the City of Truth or Consequences City Commission per the April 10, 2024, letter from the State Auditor authorizing release of the FY 2022-2023 audit.

WHEREAS, NMAC 2.2.2.10 (M) (4) provides in pertinent part that "Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable;" and,

NOW THEREFORE, BE IT RESOLVED that the City of Truth or Consequences City Commission does hereby accept and approve the completed audit report and findings as indicated within this document.

PASSED, ADOPTED AND APPROVED this 22nd day of May, 2024.

Rolf Hechler, Mayor

ATTEST:

Angela Torres, City Clerk-Treasurer



State of New Mexico
Office of the State Auditor

Via: Email

4/10/2024
Angela Gonzales, City Manager
agonzales@torcnm.org
City of Truth or Consequences

OSA Ref No. 6176

Re: Authorization to Release 2023 City of Truth or Consequences Audit Report

The Office of the State Auditor (OSA) received the audit report for your agency on 3/6/2024. The OSA has completed the review of the audit report required by Section 12-6-14(B) NMSA 1978 and any applicable provisions of the Audit Rule. This letter is your authorization to make the final payment to the Independent Public Accountant (IPA) who contracted with your agency to perform the financial and compliance audit. In accordance with the audit contract, the IPA is required to deliver to the agency the number of copies of the report specified in the contract.

Pursuant to Section 12-6-5 NMSA 1978, the audit report does not become a public record until five days after the date of this release letter, unless your agency has already submitted a written waiver to the OSA. Once the five-day period has expired, or upon the OSA's receipt of a written waiver:

- the OSA will send the report to the Department of Finance and Administration, the Legislative Finance Committee and other relevant oversight agencies;
- the OSA will post the report on its public website; and
- the agency and the IPA shall arrange for the IPA to present the report to the governing authority of the agency, per the Audit Rule, at a meeting held in accordance with the Open Meetings Act, if applicable.

The IPA's findings and comments are included in the audit report on page 108 - 110. It is ultimately the responsibility of the governing authority of the agency to take corrective action on all findings and comments.

Sincerely,

A handwritten signature in blue ink that reads "Joseph M. Maestas".

Joseph M. Maestas, P.E.
State Auditor

cc. Pattillo, Brown & Hill, LLP



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.1

SUBJECT: Approval of Audit Contract FY 2023-24
DEPARTMENT: Finance
DATE SUBMITTED: May 9, 2024
SUBMITTED BY: Kerin Salcedo
WHO WILL PRESENT THE ITEM: City Manager Gonzales

Summary/Background:

Request for Proposal.

Recommendation:

Approval of Audit Contract for Fiscal Year 2023-2024

Attachments:

- State of New Mexico Audit Contract #24-6176 with Pattillo, Brown & Hill, LLP
- -

Fiscal Impact (Finance): Choose an item.

\$49,000 plus gross receipts tax of \$3,870 for a total of \$52,870

Legal Review (City Attorney): Choose an item.

-

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. Click here to enter text. Ordinance No. Click here to enter text.

Continued To: Click here to enter a date. Referred To: Click here to enter text.

☐ Approved ☐ Denied ☐ Other: Click here to enter text.

File Name: CC Agendas 5-22-2024

STATE OF NEW MEXICO AUDIT CONTRACT

City of Truth or Consequences

hereinafter referred to as the "Agency," and

Pattillo, Brown & Hill, LLP

hereinafter referred to as the "Contractor," agree:

As required by the Audit Rule, Section 2.2.2.1 NMAC *et seq.*, Contractor agrees to, and shall, inform the Agency of any restriction placed on Contractor by the Office of the State Auditor pursuant to Section 2.2.2.8 NMAC, and whether the Contractor is eligible to enter into this Contract despite the restriction.

1. **SCOPE OF WORK** (Include in Paragraph 25 any expansion of scope)

- A. The Contractor shall conduct a financial and compliance audit of the Agency for Fiscal Year **2024** in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, the Audit Act, Sections 12-6-1 through 12-6-15, NMSA 1978, and the Audit Rule (Section 2.2.2.1 NMAC *et seq.*).

2. **DELIVERY AND REPRODUCTION**

- A. In order to meet the delivery terms of this Contract, the Contractor shall deliver the documents required by Section 2.2.2.9 NMAC to the State Auditor on or before the deadline set forth for the Agency in Section 2.2.2.9 NMAC.
- B. Reports uploaded into OSA Connect by 5:00 pm of the Agency's due date will be considered received by the due date for purposes of Section 2.2.2.9 NMAC. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor and the State Auditor may take action in accordance with Section 2.2.2.13 NMAC. If the State Auditor does

not receive copies of the management representation letter and the completed Report Review Guide with the audit report or prior to delivery of the audit report, the State Auditor will not consider the report submitted to the State Auditor.

- C. As soon as the Contractor becomes aware that circumstances exist that will make the Agency's audit report late, the Contractor shall immediately provide written notification of the situation to the State Auditor in accordance with Section 2.2.2.9 NMAC.
- D. Pursuant to Section 2.2.2.10 NMAC, the Contractor shall prepare a written and dated engagement letter that identifies the specific responsibilities of the Contractor and the Agency.
- E. After its review of the audit report pursuant to Section 2.2.2.13 NMAC, the State Auditor shall authorize the Contractor to print and submit the final audit report. Within five business days after the date of the authorization to print and submit the final audit report, the Contractor shall provide the State Auditor an electronic version of the audit report, in PDF format, and the electronic copy of the Excel version of the Summary of Findings Form, and any other required electronic schedule (if applicable). After the State Auditor officially releases the audit report by issuance of a release letter, the Contractor shall deliver **10** copies of the audit report to the Agency. The Agency or Contractor shall ensure that every member of the Agency's governing authority shall receive a copy of the report.

3. COMPENSATION

- A. The total amount payable by the Agency to the Contractor under this Contract shall not exceed **\$52,870.00** including applicable gross receipts tax.
- B. Contractor agrees not to, and shall not, perform any services in furtherance of this Contract prior to approval by the State Auditor. Contractor acknowledges and agrees that it will not be entitled to payment or compensation for any services performed by Contractor pursuant to this Contract prior to approval by the State Auditor.
- C. Total Compensation will consist of the following:

SERVICES	AMOUNTS
(1) Financial statement audit	<u>\$42,500.00</u>
(2) Federal single audit	<u>\$4,000.00</u>
(3) Financial statement preparation	<u>\$2,500.00</u>
(4) Other nonaudit services, such as depreciation schedule updates	<u>\$0.00</u>
(5) Other (i.e., component units, specifically identified)	<u>\$0.00</u>

Gross Receipts Tax = **\$3,870.00**

Total Compensation = **\$52,870.00** including applicable gross receipts tax

D. The Agency shall pay the Contractor the New Mexico gross receipts tax levied on the amounts payable under this Contract and invoiced by the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below.

E. The State Auditor may authorize progress payments to the Contractor by the Agency; pursuant to Section 2.2.2.8(M)(3) NMAC; provided that the authorization is based upon evidence of the percentage of audit work completed as of the date of the request for partial payment. State Auditor approval after being approved by the Agency. If requested by the State Auditor, the Agency shall provide a copy of the progress billings. Final payment for services rendered by the Contractor shall not be made until a determination and written finding is made by the State Auditor in the release letter that the audit has been made in a competent manner in accordance with the provisions of this Contract and applicable rules of the State Auditor. G. The State Auditor may authorize progress payments to the Contractor by the Agency; pursuant to Section 2.2.2.8(M)(3) NMAC; provided that the authorization is based upon evidence of the percentage of audit work completed as of the date of the request for partial payment. If requested by the State Auditor, the Agency shall provide a copy of the progress billings. Final payment for services rendered by the Contractor shall not be made until a determination and written finding is made by the State Auditor in the release letter that the audit has been made in a competent manner in accordance with the provisions of this Contract and applicable rules of the State Auditor.

4. **TERM.** Unless terminated pursuant to Paragraphs 5 or 19, this Contract shall terminate one calendar year after the latest date on which it is signed.

5. **TERMINATION, BREACH AND REMEDIES**

A. This Contract may be terminated:

1. By either party without cause, upon written notice delivered to the other party and the State Auditor at least ten (10) days prior to the intended date of termination.
2. By either party, immediately upon written notice delivered to the other party and the State Auditor, if a material breach of any of the terms of this Contract occurs. Unjustified failure to deliver the report in accordance with Paragraph 2 shall constitute a material breach of this Contract.
3. By the Agency pursuant to Paragraph 19, immediately upon written notice to the Contractor and the State Auditor.
4. By the State Auditor, immediately upon written notice to the Contractor and the Agency after determining that the audit has been unduly delayed, or for any other reason.

B. By termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. If the Agency or the State Auditor terminates this Contract, the Contractor shall be entitled to compensation for work performed prior to termination in the amount of earned, but not yet paid, progress payments, if any, that the State Auditor has authorized to the extent required by Paragraph 3(E). If the Contractor terminates this Contract for any reason other than Agency's breach of this

Contract, the Contractor shall repay to the Agency the full amount of any progress payments for work performed under the terms of this Contract.

C. Pursuant to Section 2.2.2.8 NMAC, the State Auditor may disqualify the Contractor from eligibility to contract for audit services with the State of New Mexico if the Contractor knowingly makes false statements, false assurances or false disclosures under this Contract. The State Auditor on behalf of the Agency or the Agency may bring a civil action for damages or any other relief against a Contractor for a material breach of this Contract.

D. THE REMEDIES HEREIN ARE NOT EXCLUSIVE, AND NOTHING IN THIS SECTION 5 WAIVES OTHER LEGAL RIGHTS AND REMEDIES OF THE PARTIES.

6. STATUS OF CONTRACTOR

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles or any other benefits afforded to employees of the Agency as a result of this Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed under this Contract unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract.

8. SUBCONTRACTING

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the Agency and the State Auditor. An agreement between the Contractor and a subcontractor to subcontract any portion of the services under this Contract shall be completed on a form prescribed by the State Auditor. The agreement shall be an amendment to this Contract and shall specify the portion of the audit services to be performed by the subcontractor, how the responsibility for the audit will be shared between the Contractor and the subcontractor, the party responsible for signing the audit report and the method by which the subcontractor will be paid. Pursuant to Section 2.2.2.8 NMAC, the Contractor may subcontract only with independent public accounting firms that are on the State Auditor's List of Approved Firms, and that are not otherwise restricted by the State Auditor from entering into such a contract.

9. RECORDS

The Contractor shall maintain detailed time records that indicate the date, time, and nature of services rendered during the term of this Contract. The Contractor shall retain the records for a period of at least five (5) years after the date of final payment under this contract. The records shall be subject to inspection by the Agency and the State Auditor. The Agency and the State Auditor shall have the right to audit

billings both before and after payment. Payment under this Contract shall not foreclose the right of the Agency or the State Auditor on behalf of the Agency to recover excessive or illegal payments.

10. **RELEASE**

The Contractor, upon receiving final payment of the amounts due under the Contract, releases the State Auditor, the Agency, their respective officers and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract. This paragraph does not release the Contractor from any liabilities, claims or obligations whatsoever arising from or under this Contract.

11. **CONFIDENTIALITY**

All information provided to or developed by the Contractor from any source whatsoever in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor, except in accordance with this Contract or applicable standards, without the prior written approval of the Agency and the State Auditor.

12. **PRODUCT OF SERVICES; COPYRIGHT AND REPORT USE**

Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. The Agency and the State Auditor may post an audited financial statement on their respective websites once it is publicly released by the State Auditor. For District Courts and District Attorneys only, the contractor agrees that the Financial Control Division of the Department of Finance and Administration (DFA) is free to use the audited financial statements in the statewide Comprehensive Annual Financial Report and that the Contractor's audit report may be relied upon during the audit of the statewide Comprehensive Annual Financial Report, if applicable. However, DFA should not provide to any third party, other than the Comprehensive Annual Financial Report auditor, the District Courts' or District Attorneys' draft audit reports or their opinion letters or findings.

13. **CONFLICT OF INTEREST**

The Contractor represents and warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. Each of the Contractor and the Agency certifies that it has followed the requirements of the Governmental Conduct Act, Section 10-16-1, *et seq.*, NMSA 1978, regarding contracting with a public officer, state employee or former state employee, as required by the applicable professional standards.

14. **INDEPENDENCE**

The Contractor represents and warrants its personal, external and organizational independence from the Agency in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States, and Section 2.2.2.8 NMAC. The Contractor shall immediately notify the State Auditor and the Agency in writing if any impairment to the Contractor's independence occurs or may occur during the period of this Contract.

15. AMENDMENT

This Contract shall not be altered, changed or amended except by prior written agreement of the parties and with the prior written approval of the State Auditor. Any amendments to this Contract shall comply with the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978.

16. MERGER

This Contract supersedes all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract. Contractor and Agency shall enter into and execute an engagement letter pursuant to Section 2.2.2.10 NMAC, consistent with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAGAS). **The engagement letter and any associated documentation included with or referenced in the engagement letter shall not be interpreted to amend this Contract. Conflicts between the engagement letter and this Contract are governed by this Contract, and shall be resolved accordingly.**

17. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Contract. By execution of this Contract, Contractor irrevocably consents to the exclusive personal jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising from or related to this Contract.

18. AGENCY BOOKS AND RECORDS

The Agency is responsible for maintaining control of all books and records at all times and the Contractor shall not remove any books and records from the Agency's possession for any reason.

19. APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the legislature or the Agency's governing body for the performance of this Contract. If sufficient appropriations and authorization are not made by the legislature or the Agency's governing body, this Contract shall terminate upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. This section of the Contract does not supersede the Agency's requirement to have an annual audit pursuant to Section 12-6-3(A) NMSA 1978.

20. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for certain violations. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. EQUAL OPPORTUNITY COMPLIANCE

The Contractor shall abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance with all such laws, rules, regulations and orders, the Contractor assures that no person in the United States shall, on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If the Contractor is found not to be in compliance with these requirements during the life of this Contract, the Contractor shall take appropriate steps to correct these deficiencies.

22. WORKING PAPERS

- A. The Contractor shall retain its working papers of the Agency's audit conducted pursuant to this Contract for a period of at least five (5) years after the date shown on the opinion letter of the audit report, or longer if requested by the federal cognizant agency for audit, oversight agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor, the Contractor shall deliver the original or clear, legible copies of all working papers to the requesting entity.
- B. The Contractor should follow the guidance of AU-C 210 A.27 to A.31 and AU-C 510 .A3 to .A11 in communications with the predecessor auditor and to obtain information from the predecessor auditor's audit documentation.

23. DESIGNATED ON-SITE STAFF

The Contractor's on-site individual auditor responsible for supervision of work and completion of the audit is **Chris Garner**. The Contractor shall notify the Agency and the State Auditor in writing of any changes in staff assigned to perform the audit.

24. INVALID TERM OR CONDITION

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected.

25. OTHER PROVISIONS

SIGNATURE PAGE

This Contract is made effective as of the date of the latest signature.

AGENCY

City of Truth or Consequences

PRINTED
NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

CONTRACTOR

Pattillo, Brown & Hill, LLP

PRINTED
NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.2

SUBJECT: Sierra County Swim Team, Agreement
DEPARTMENT: Swimming Pool
DATE SUBMITTED: May 16, 2024
SUBMITTED BY: O.J. Hechler
WHO WILL PRESENT THE ITEM: O.J. Hechler, Community Service Director

Summary/Background:

2024 Agreement between the City of Truth or Consequences and the Sierra County Swim Team to allow the swim team to utilize the J.A. Hodges Municipal Swimming Pool at a reduced cost in exchange for services described in the attached agreement.

Recommendation:

Approve agreement

Attachments:

-2024 Sierra County Swim Team Agreement

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 5-22-24

AGREEMENT

May 22, 2024

This AGREEMENT is entered into by and between the City of Truth or Consequences, a municipality corporation (hereinafter referred to as "City") and the Sierra County Swim Team, (hereinafter referred to as "Swim Team"), to utilize the J.A. Hodges Municipal Swimming Pool, (hereinafter referred to as Swimming Pool).

RECITALS

- A. The City owns and operates the Swimming Pool.
- B. The Swim Team provides a public service to the City and the community.
- C. The parties desire to enter into this Agreement whereby the Swim Team will be allowed to utilize the Swimming Pool at a reduced cost in exchange for services described below.

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties hereby agree as follows:

- 1. The City does hereby allow and permit the Swim Team to utilize the Swimming Pool at a reduced cost of \$910.00 in total per the terms of this contract.
- 2. In consideration for the above, the Swim Team shall provide services to the City and community to be agreed upon by the parties. The services shall include, but not necessarily limited to the following:
 - a. The Swim Team will provide youth activities to include exercise and swimming competitions, and organized swim lessons after Swim Team season.
 - b. The Swim Team will develop and certify Junior Lifeguards.
 - c. The Swim Team will participate and represent the City and community at competitive meets throughout the State.

3. The term of this Agreement shall be for the period commencing on May 27, 2024 through _____, 2024.

4. Either party may terminate this Agreement by giving thirty (30) day notice to the other party.

5. The Swim Team will provide their own certified lifeguards.

6. The Swim Team will provide general liability insurance naming the City as an additional insured (1 million per occurrence and 2 million in aggregate) and agrees to hold the City free and harmless from any claims for damages arising out of the Swim Team using the Swimming Pool.

SIERRA COUNTY SWIM TEAM:

By: _____

MAILING ADDRESS: _____

Phone: _____

Email: _____

CITY OF TRUTH OR CONSEQUENCES:

By: _____
O.J. Hechler, Director of Community Services

Angie Gonzales, City Manager

City of Truth or Consequences Municipal Swimming Pool
775 Daniels Street
Truth or Consequences, NM 87901
Phone: 575-894-6199
Email: orrin.hechler@torcnm.org



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.3

SUBJECT: PD Update
DEPARTMENT: City Manager's Office
DATE SUBMITTED: May 16, 2024
SUBMITTED BY: City Clerk Torres
WHO WILL PRESENT THE ITEM: Chief of Police Tavizon

Summary/Background:

PD Update.

Recommendation:

Presentation only

Attachments:

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

Fiscal Impact (Finance): N/A

[Click here to enter text.](#)

Legal Review (City Attorney): N/A

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC agendas 5-22-2024



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.4

SUBJECT: Approval of Purchase Requisitions Over \$20,000
DEPARTMENT: Finance
DATE SUBMITTED: May 15, 2024
SUBMITTED BY: Mindee Holguin, CPO
WHO WILL PRESENT THE ITEM: Angie Gonzales, City Manager or Traci Alvarez, Assistant City Manager

Summary/Background:

Per Resolution No 46 20/21 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint Powers Agreements; Settlement Agreements; Purchases (Contract and Purchases More Than \$20,000)

Recommendation:

Approval Recommended by Finance Director

Attachments:

- Listing of Purchase Requisitions \$20,000 or More
- Purchase Requisitions, Procurement Documentation

Fiscal Impact (Finance): Choose an item.

As Per Total on Listing of Purchase Requisitions

Legal Review (City Attorney): Choose an item.

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC Agendas 5-22-24

PURCHASE REQUISITION APPROVAL**2023-24 Fiscal Year****COMMISSION MEETING 05/22/2024**

Number	Vendor Name	Description	Requested By	Department	Total Amount	Procurement Type
91922	Wilson & Company	Professional Services for Ralph Edwards Park ramp & dock	O.J. Hechler	Parks	\$ 41,675.06	
92115	ADSLCNM, dba American Document	Destructions Services	M. Clanton	Courts	\$ 2,171.62	
92175	Melloy Chevrolet	2024 Jeep Grand Cherokee Laredo	T. Alvarez	Admin/Utility	\$ 41,746.00	
79252	Eurofins Environmental Testing	EPA Method Testing	A. Castaneda	Waste Water	\$ 20,768.00	
					\$ 106,360.68	

ATTEST:

Angela Torres, Clerk-Treasurer

Date

Rolf Hechler, Major

Date



REQUISITION

Requisition #: 91922

Date: 04/03/2024

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 PROFESSIONAL SERVICES - RAMP AND		0.00 315-8010-48598	41,675.06
PO Description: RALPH EDWARDS PARK NEW BOAT ACCESS RAMP AND DOCK Detailed Description: RALPH EDWARDS PARK SHADE STRUCTURE AND NEW RIVER RAMP AND DOCK PROJECT PROCUREMENT: WILSON & CO. ON-CALL PROFESSIONAL DESIGN SERVICES TRAILS: GRANT FROM THE NM ECONOMIC DEVELOPMENT DEPARTMENT ATTACHMENTS: TASK ORDER AND GRANT AGREEMENT				

Authorized By: _____

SUBTOTAL:	38,700.00
TOTAL TAX:	2,975.06
SHIPPING:	0.00
TOTAL	41,675.06



REQUISITION

Requisition #: 92115

Date: 05/06/2024

Vendor #: 9085

ISSUED TO: ADSLCNM, INC DBA AMERICAN DOCUMENTATION
300 A N 17TH STREET
LAS CRUCES, NM 88005-

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	34 DESTRUCTION SERVICES		56.90 101-1002-48599	1,934.60
2	1 TRAVEL CHARGE		75.00 101-1002-48599	237.02

PO Description: DESTRUCTION SERVICES

Detailed Description:

PENDING APPROVAL COMMISSION MEETING 5/22/2024

COURT

SUBTOTAL:	2,009.60
TOTAL TAX:	162.02
SHIPPING:	0.00
TOTAL	2,171.62

Authorized By: _____



REQUISITION

Requisition #: 92175

Date: 05/10/2024

Vendor #: 3324

ISSUED TO: MELLOY CHEVROLET
357 EMILIO LOPEZ RD
LOS LUNAS, NM 87031

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	1 2024 JEEP GRAND CHEROKEE LAREDO		41,746.00 315-8006-10136	41,746.00
PO Description: ADMINISTRATIVE VEHICLE Detailed Description: NEEDS COMMISSION APPROVAL 5-22-2024				

Authorized By: _____

SUBTOTAL:	41,746.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	41,746.00

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims St.
Truth or Consequences, NM 87901
PH: (575) 894-6673
FAX: (575) 894-0363

PURCHASE ORDER**PO Number:** 79252**Date:** 11/28/2023**Requisition #:** 91207**Vendor #:** 9026

ISSUED TO: EUROFINS ENVIRONMENTAL TESTING SOUTH CENTRAL,
4901 HAWKINS NE
ALBUQUERQUE, NM 87109-

SHIP TO: City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87901

ITEM	UNITS	VENDOR PART #	DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0		EPA METHOD 625 SVOCS	506-4005-48598		0.00	7,200.00
2	0		EPA METHOD 624 VOCS	506-4005-48598		0.00	5,000.00
3	0		SM5210B-BOD	506-4005-48598		0.00	3,460.00
4	0		EPA 200.8 METALS/200.7 METALS	506-4005-48598		0.00	3,430.00
5	0		TAX ON LABOR 7.875%	506-4005-48598		0.00	1,378.00
WEEKLY TESTS OPEN PO FY23/24 WASTE WATER (PREVIOUSLY HALL ENVIRONMENTAL)							
6	0		BOTTLE CHARGE	506-4005-48598		0.00	300.00
WW							

Chief Purchasing Office**Date:**

05/28/2024

Director of Finance:

Requisition approved electronically.

City Manager:

Requisition approved electronically.

SUBTOTAL:	20,768.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	20,768.00

X

CITY MANAGER

1. Send INVOICE to Accounts Payable, address as noted above.
2. Prepay all transportation charges, and attach receipted freight bill to invoice.
3. Show our Purchase Order number on all invoices, Bills of Lading, Packages, etc.
4. This order must NOT be filled in greater or lesser quantities than shown without our written permission.
5. This order is issued with the understanding that if material is not according to our specifications, same will be returned at seller's expense.
6. The right is reserved to cancel this order if not filled within a reasonable length of time.
7. The City is exempt from all federal excise and state tax - ID# 01-405755-007



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.5

SUBJECT: Discussion/Action - Variance request at 2090 S. Broadway

DEPARTMENT: Community Development

DATE SUBMITTED: May 17, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Review attached P & Z Packet

Public Hearing was held at the P & Z Meeting on 5-13-24

Recommendation:

Accept/Deny P & Z Recommendation

Attachments:

- P & Z Agenda Packet
- Draft Meeting Minutes P & Z 5-13-2024

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-22-24



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 5-13-2024

ITEM:

Public Hearing/Discussion/Action: Variance request at 2090 S. Broadway for the placement of Metal Buildings as per Chapter 16 - Comprehensive Planning and Zoning Code Article XIV. - Development Standards Sec. 11-14-12. - Metal Buildings.

BACKGROUND:

Property is in the C-1 district. Applicant is requesting a variance from the code for the following allowances
- All new metal buildings in the C-1 and M-1 Planning and Zoning Districts shall have a facade or veneer consisting of a non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic or other similar approved material on all sides of the structure that face a public street. – No façade or veneer

See attached letter from applicant

SUPPORT INFORMATION:

- Site Plan
- Parcel Map
- Code References
- Findings of Facts Checklist

Name of Drafter: Traci Alvarez	: Assistant City Manager	Meeting date 3-13-2023
E-mail: talvarez@torcnm.org	Phone: 575-894-6673	

Whitehead Partners LLC
15381 Highway 187
Williamsburg, NM 87942

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

Re: 2090 S. Broadway – Variance

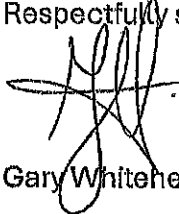
Greetings,

I am submitting this application, requesting a variance from the requirement to have a façade:

“All new metal buildings in the C-1 Planning and Zoning Districts shall have a facade or veneer consisting of a non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic or other similar approved material on all sides of the structure that face a public street.”

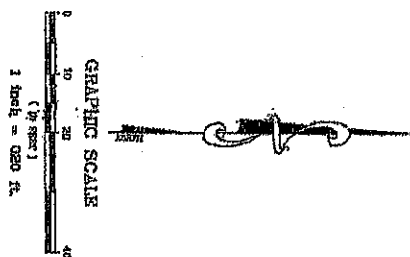
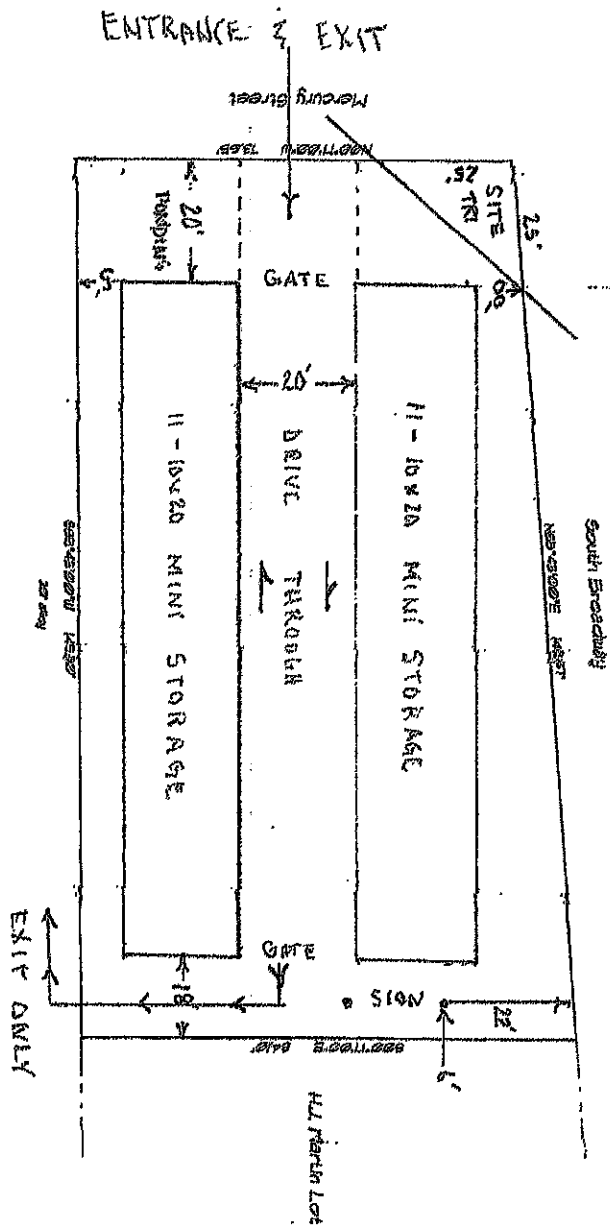
The area on South Broadway is generally more industrial. The adjacent property owner has a metal fence. The business across the street is a metal building without façade. The property across the street is a vacant lot. We believe our project, built without adding a façade, will be consistent with the area's construction and will not adversely affect the neighborhood.

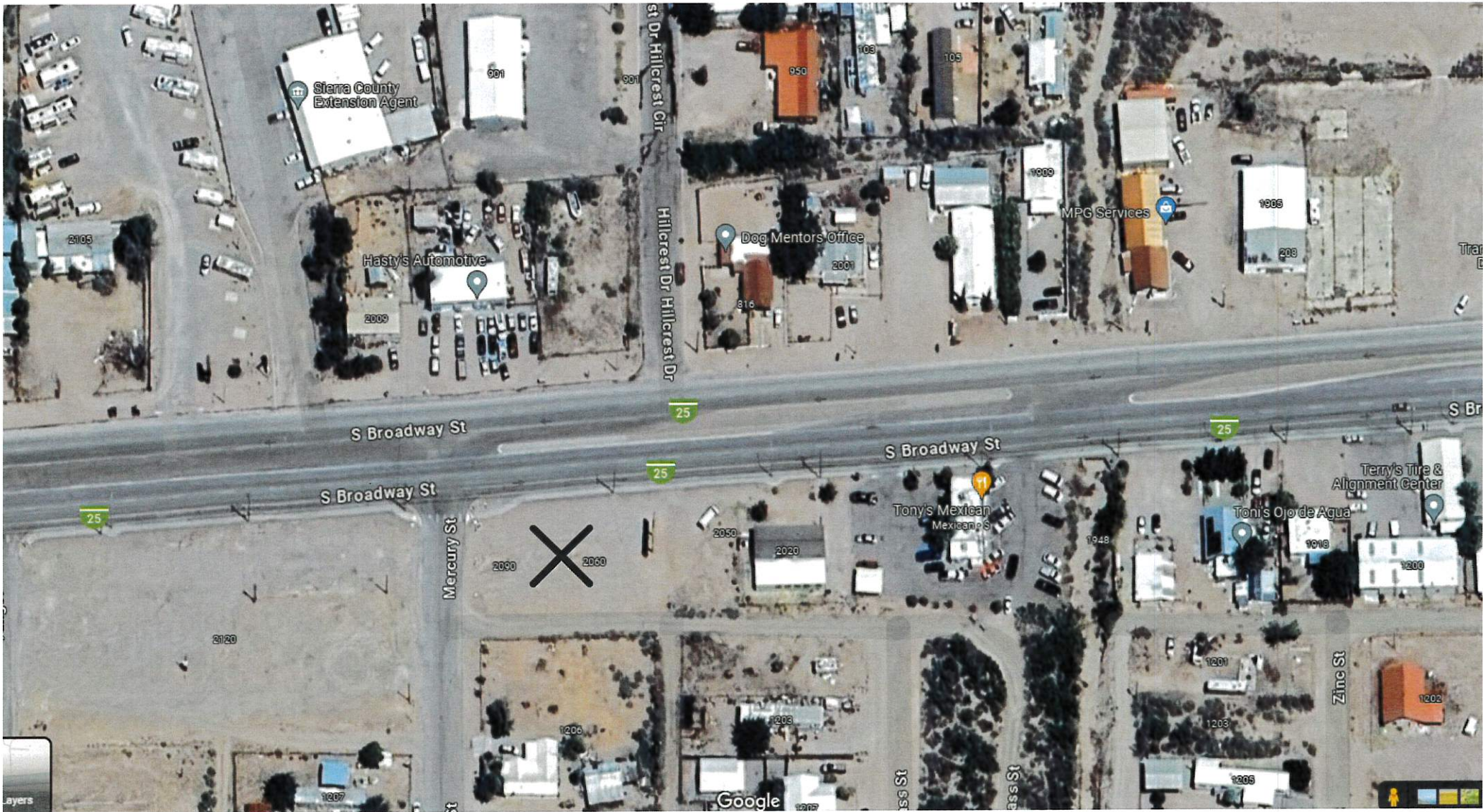
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gary Whitehead', is written over the typed name below.

Gary Whitehead, Whitehead Partners LLC.

PLAT OF
 Lots 16, 17 & 18, Grace Estate Home Estate Survey,
 and the West Adjoining Tract,
 in the City of Truth or Consequences, Santa County,
 New Mexico





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.

Sec. 11-14-12. Metal Buildings.

All new metal buildings in the C-1 and M-1 Planning and Zoning Districts shall have a facade or veneer consisting of a non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic or other similar approved material on all sides of the structure that face a public street.

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES
MONDAY, MAY 13, 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, May 13, 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
Angela A. Torres, City Clerk
Katy Martinez, City Clerk Admin Assistant

1. APPROVAL OF AGENDA:

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

2. APPROVAL OF MINUTES:

a) April 8, 2024.

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

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

There were no comments from the public.

City Clerk Torres swore in the participants for the public hearings.

4. PUBLIC HEARINGS (5 Minute Rule Applies)

a) Public Hearing/Discussion/Action: Variance request at 2090 S. Broadway for the placement of Metal Buildings as per Chapter 16 - COMPREHENSIVE PLANNING AND ZONING CODE ARTICLE XIV. - DEVELOPMENT STANDARDS Sec. 11-14-12. - Metal Buildings.

Assistant City Manager Alvarez: Chairmen, member of the board property is in the C-1 district applicant is requesting a variance from the code for the section that states all metal buildings should have a façade or veneer consisting of the non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic, or other similar approved material on all sides of the structure that face a public street. The applicant is requesting no façade or veneer in your agenda packet you have the attached letter from the applicant as well as your site plan the parcel map your code references as well as the findings and fact check list and applicant is in attendance. Mr. Gary Whitehead.

Chairman Sisney opened the public hearing.

Proponents:

Gary Whitehead, Applicant: Thank you members of the committee, it's good to be here in front of you today. We are constructing and requested a permit approval for a new storage facility on this particular property were installing 22 standard storage units like you would see anywhere. They are metal construction they come in a kit. They are prefab. We have those at 510 S Broadway that's our first project that we have. When we started the construction project, we had intended to put the buildings to where the doors faced the outside. Where they would face Broadway but based on setbacks and the design, we needed to use we needed to face off Mercury was the best way to access. Once we got that understanding we broke the building apart into two sections so we could create a safer environment in the middle of our storage units so we don't have to put a fence you will be able to drive straight. We have a metal electric gate for our customers. Effectively we didn't envision that we would be required to do a façade on the outside of the storage. What I would point out in the area the other thing to kind of tie into the neighborhood Tony if you know him from Tony's Café. He's already put up a white six-foot fence around his entire property so we ordered our buildings in white and grey so they would at least match the neighborhood. We did that before we had even understood we would have to do a façade. So, at the end of the day, we could say that the building across the street is a metal building without a façade. I don't think Tony has any objections and so we would ask for a variance of the need to put the façade on the building. It's not going to create any safe

and not going to create any hazard and it's probably an eight-thousand-dollar expense with we could use somewhere else on the project. So, I'll stand for questions.

Member Kent: So, these are going to be white metal buildings you said?

Gary Whitehead, Applicant: That's correct.

Member Kent: So, driving down Broadway you would just see the back side?

Gary Whitehead, Applicant: You would see the back side a white metal with grey trim. And then landscaped you've driven by the project we had to bring in considerable fill, so we are going to landscape that, so we don't have any runoff or any issues with that and then get black metal fencing on the Mercury side for gates and drive through.

Vice Chairman Buhler: Will you have lighting?

Gary Whitehead, Applicant: Yes. The inside of the facility will be lite. We won't have any exterior lighting but again the inside.

Member Kent: When you say inside between the buildings?

Gary Whitehead, Applicant: Between the buildings are twenty-one feet between the inside the buildings in that space where you would drive in and access your storage units. So, we will light that facility so again customers will feel safe and invited to come in at night. And provide some security.

Member Kent: When you say you will do landscaping on the Broadway side because you said you had to bring in a lot of fill dirt and stuff and like landscaping are you going to plant anything.

Gary Whitehead, Applicant: No there will be no plan it will be native. It's a pretty good slope so the contractor we are working with suggested that we use the bigger rock that will hold it all and prevent run offs. So, it will be landscaped kind of that way.

Vice Chairman Buhler: What kind of fencing are you putting on it?

Gary Whitehead, Applicant: So, on the front on the Mercury side and on the side up against Tony's it will have a welded six-foot open slat fence so you can't crawl over and then with an electric gate.

Member Luchini: And on Broadway side?

Gary Whitehead, Applicant: Well, there will be no gate on Broadway you won't be able to get in or see in from Broadway.

Assistant City Manager Alvarez: His building plans have been submitted to the city and they've gone through the engineering because it was an undeveloped site. It was sent all the way up to our engineer that over sees, and they've done the full review on all of his plans submittal including the drainage including the landscaping and everything and it's all approved per our municipal code.

Member Kent: Except the façade?

Gary: we even have approval for the façade I submitted a plan to do a four-foot wings coat typical on a metal building, and I know that was approved so all we are asking is that we don't have to put that wings coat on it because it would be consistent with our other projects.

Vice Chairman Buhler: I make a motion that we approve. I recommend you not to have a façade and the extra expense. For this I make a motion.

Chairman Sisney: Nothing personal Mr. Whitehead just trying to take care of business. There is no hardship involved here, it's just you're asking not to do what has been put into the code. I'm here to protect it's my job to protect the laws of the City of Truth or Consequences and I'm just curious you're asking without a hardship, and this will set a precedent. So now with a precedent our hands are tied at that point.

Gary Whitehead, Applicant: well, I would say to you that the precedent is already set sir. Metal buildings have been constructed in the city for more than 25 years and it's become a very known product. They are spread out the city in lots of places and I think in geographical locations where you find that they are already in, and they are not going to affect the neighborhood they are not going to affect the aesthetics. I think you have the ability to say we could get by with that. Now I'll give you a good example which I think you did right. The family dollar on top of the hill. It's in a beautiful location, it's in a fantastic spot, it overlooks the city of Truth or Consequences that potentially would not have been as quality of a product if it would have just been a metal building standing out there for the world to see. So, I think you have the ability to protect both, and the precedent is already set so not to be argumentative with all due respect but. And I constructed 25 units in 2018 and we were not required to put that façade. So again, I don't know if that was the code in 2017.

Chairman Sisney: So, let me ask a question of Mrs. Alvarez. When did this code come into effect?

Assistant City Manager Alvarez: I didn't look and see. Let me see you guys have the section of the code.

Chairman Sisney: Because I just want to establish whether this will be a precedent or not. If there wasn't a law, then there wasn't a precedent until it became a law.

Assistant City Manager: So, the city clerk might have it. She has the ability to look it up in the code. I don't have that noted in my stuff.

Chairman Sisney: Well, their looking at that let me ask another question. I'm sorry to interrupt.

Assistant City Manager: It might have been in there for some time.

Member Luchini: I will make a comment. That happened to us with H&O Tire and Feed. We did have to put a wood façade on the building that faced Date. We didn't ask for a variance we went ahead and put it.

Chairman Sisney: I was a little confused when you said there was no fence going to be on Broadway. So, the building is going to establish a wall itself.

Gary Whitehead, Applicant: That's correct.

Chairman Sisney: and the fences will be up to the buildings.

Gary Whitehead, Applicant: The fences will be on the mercury side. Going north and south. So again, on mercury that's where the fences will be but on Broadway it will be just the solid building.

Member Luchini: What about on the east side towards Tony's?

Gary Whitehead, Applicant: Tony already has a six-foot wall and it's not required by the code if we were to do that. It only requires the sides that face a public street.

Member Luchini: But your gate? Your security gate?

Gary Whitehead, Applicant: There will be a security gate on that side as well. Cause we would want the whole interior of the storage to be secure.

Chairman Sisney: So, in reality the only part of the building that would require any façade would be Broadway and this much of the corner of that building that going down mercury cause then it becomes a fence?

Gary Whitehead, Applicant: If we were getting technical, I would say yes but if the deserve the committee and the commission is for me to put a façade, I would probably have to go down all of mercury just so it would aesthetically look correct right.

Chairman Sisney: But you wouldn't have to do the back side then?

Gary Whitehead, Applicant: I wouldn't have to do the alley it isn't required on the alley side.

Chairman Sisney: ok

City Clerk Torres: On the code it's not really showing me when it was generated but it looks like it's been here for a while. I don't recall us making any amendments to this portion of the code within the last five or more years. It's kind of an older.

Member Luchini: we are having a workshop aren't we regarding this kind of topic today? No those were the storage containers.

City Clerk Torres: so yeah, the storage containers they are going to do a workshop and they are going to change that. I'm not sure when they are. That won't be the same one that I called you guys on for this morning.

Chairman Sisney: I have another question for you Mr. Whitehead if don't mind. You said these are kits are they roll offs?

Gary Whitehead, Applicant: No, this is a designed mini storage product that we purchased.

Chairman Sisney: So, you pour a slab?

Gary Whitehead, Applicant: It's got a concrete slab.

Chairman Sisney: So, these things are staying.

Gary: these are permanent structures. They are designed engineered all stamped. They are consistent with any mini storage that you would see in any town and place you would drive you would see they are consistent with that product. Roll up doors you know permanent.

Chairman Sisney: thank you. I have satisfied my questions if anyone wants to ask a question or continue, I'm done.

City Clerk Torres: So ,I know we don't have anyone else who signed up but just to go through protocol before we move forward with the motion we will go ahead and ask if anybody else wants to speak if they don't then we can close the public hearing and then you guys can do the motion and then we will do that process for each one of the public hearings.

Member Luchini: what was the façade that you had designed so far?

Gary Whitehead, Applicant: We found a product called a wings coat. It's three and a half foot I think 42 inches and it's just fake bricks they are Styrofoam looks like there is plenty of products on the market that you could buy, and it attaches to the building it would look ok. It's just a lot of money. But you know again if that the way you want to perceive it's understandable, I have no problem with it either.

Vice Chairman Buhler: I would like to say one thing. People are building homes now out of metal buildings, and they have their home in it, and they have their shop in it. They have numerous things in them and personally I don't have a problem with it at all. cause you know it's a profiled metal to correct kind of?

Gary Whitehead, Applicant: Yeah, I think that's what it's called. Again, chairman and vice chair I don't think I would be asking, and I think I would accept it being harder if I was in the middle of downtown T or C. I'm effectively saying I'm in an area that already has used metal buildings there is not a lot of construction. The neighbor next to me has the same exact product in a six-foot wall. This building will look no different. So that's why I'm asking for the variance. My façade is not going to make that neighborhood look any better or worse than what it already does. If I do the building right it will be a nice product it will be clean it will look good it will be a nice improvement and little bit of economic development you know all the buzz works but you know I think I'm not asking for something that's outside the scope other than in that particular neighborhood \$5000 in fake brick are going to make us any better or worse. Where if I was building next to Bank of the Southwest downtown. The Bank of the Southwest might say gosh we have a problem with that we spent lots of money you know what I'm saying. So, I feel like that's the only request and again I appreciate the opportunity to speak and understand whichever way we have to go.

Chairman Sisney: Thank you Mr. Whitehead.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Vice Chairman Buhler made a motion to recommend approval to the City Commission for a Variance request at 2090 S. Broadway for the placement of Metal Buildings. Member Kent seconded the motion. Roll call vote was taken.

Chris Sisney, Chairman voted nay.

Susan Buhler, Vice Chairman voted aye.

Esther Luchini, Member voted nay.

Lisa Kent, Member voted aye.

Motion tied with a 2-2 vote.

City Clerk Torres: That was a tied vote. Does anyone else want to make another motion or do you want to just take that motion to the commission.

Vice Chairman Buhler: Well, they are the are the ultimate deciders anyways.

Member Luchini: We are just approving these variances as they come up and the ordinance that are in the book and null and void if we keep approving these variances.

Gary Whitehead, Applicant: I understand and accept it.

Member Luchini: I do believe that you have a quality product that will look nice and the neighbors.

Gary Whitehead, Applicant: Unfortunately, it's one of those it happens to the developer that doesn't read all the codes so its ignorance right when you get your final approval, and you go oh great it's all approved and you read through everything and then it's saying and you have to put a façade. You know I don't know how we fix that but it's ok.

City Clerk Torres: So, if I could just make a comment, so I think the reason why add a variance request to the code is because there are certain circumstances to where like the property is trashy and it wouldn't look good or something like that then of course those would be reasons for you guys to deny it. But sometimes stuff like this could be a benefit or you know what I mean or if there is no opponent. I'm not trying to sway your vote I'm just trying to explain why they do have variances and I know it seems like we are going against the code but that was the reason behind them actually adding a variance so you could do it by a case-by-case basis and kind of make a decision on if you wanted to approve it or not.

Assistant City Manager Alvarez: If I could expand on that. That's why what is included in your packet that every public hearing for planning and zoning commission hears is supposed to be based on the seven findings of facts. That's to help you make a decision for or against.

Member Kent: I mean personally given industrial ness of that area. I mean there is an auto mechanic across the street with fifty cars parked all over the place you can't even drive by half the time. I would rather see a nice new metal building than fake brick. So, I'm not going to push to say you have to put fake brick up. But I get its case by case and everybody has their thoughts.

City Clerk Torres: We could move on to the next one.

Chairman Sisney: You know it goes to city council.

Member Luchini: Well, you know everybody starts with good intentions when they build something. You know I'm sure Hastys across the street didn't intend to have fifty cars outside his business by now, you know twenty or thirty years later. And whether a façade was required at the time he put his building in we don't know. I would say no it was not that was that long ago. I know we could trust you to have a good product, a clean product, a healthy product, service. So, then it snowballs. One bad apple is going to ruin it for everybody else.

b) Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Shipping Containers as per Section 11-10-4 A (3).

Assistant City Manager Alvarez: The next two items are applicable to this property, so I'm going to present them together even though you guys have to vote on each variance separately. They are kind of tied into one in the same. The first variance request is for the placement of shipping containers per our municipal code shipping containers are allowed in the commercial district, but they must be subordinate to a main use or structure. The applicant is requesting to use shipping containers for the purpose of storage units so there is no main structure on that property and then similar to the variance request that we just heard they are also requesting a variance for no façade or veneer in the commercial district. You guys have your sight plan in there as well as pictures of what the storage units look like or the shipping containers that are designed to be storage units and all of you supporting documents sight plans, parcel map where these would be located and then as City Clerk Torres let us know there was the email that came through that has some questions as well. Applicants are in attendance to answer and questions.

Chairman Sisney opened the public hearing.

Proponents:

Laurie Chavez, Applicant: I have 500 N Date St. I'm not really a good speaker but I'm here for whatever it is that you need to ask of me. The shipping containers that we want to place on the property are brand new. They are 10x40 units so there would be four units on each side and the proposal is to set up to units back-to-back to start. Then possibly put two to four more on the property. They are brand new they are a cream color so they will mix in fine. We sit down off of Date St.

Vice Chairman Buhler: Is there any flood problem with that property that you know of?

Laurie Chavez, Applicant: Not that I know of.

Assistant City Manager Alvarez: This still has to go through planning and zoning portion. It came to variance first before we went through the whole process of submitting.

Vice Chairman Buhler: Do you plan to have lighting?

Laurie Chavez, Applicant: Yes, on each unit. Each unit has a roll up door and there is going to be a solar motion light in front of each unit.

Vice Chairman Buhler: Can you drive up to your unit? How would you get to your unit?

Laurie Chavez, Applicant: Yes, you will be able to drive up to them.

Vice Chairman Buhler: All of them?

Laurie Chavez, Applicant: Yes.

Vice Chairman Buhler: Ok, that's good.

Member Kent: There will be no security gates on the property?

Laurie Chavez, Applicant: No security gates.

Vice Chairman Buhler: No fence?

Laurie Chavez, Applicant: No fence unless we are told to put one up, we can do that. But they are secure units, they are extremely thick. Dividing units between each are not going to be wood they are going to be actual metal. So, nobody could get into each other's units.

Vice Chairman Buhler: You know they make a box to where you can have the lock in the box where somebody can't get a pair of bolt cutters. You might check into that.

Laurie Chavez, Applicant: Its up to each individual person that rents the unit to put their own lock on there.

Vice Chairman Buhler: Right.

Member Kent: Would you do any landscaping along Date St?

Laurie Chavez, Applicant: We are sitting down below Date St. You're only going to see the tops of the units themselves.

Member Kent: How far down are you? I can't tell on the map.

Laurie Chavez, Applicant: Its where the only Circle C Motel use to be. Right across from the catholic church.

Member Kent: That's probably before my time.

Laurie Chavez, Applicant: The Hot Springs Cannabis is right next door. They have a conic outside.

Chairman Sisney: You stated that they are 10x40 are they 16x40?

Laurie Chavez, Applicant: No, they are 10x40.

Chairman Sisney: The drawling shows each unit being 8x10.

Laurie Chavez, Applicant: Maybe I miss quoted. Maybe they are 8x10.

Chairman Sisney: So, its 16x10? It would be 16 wide, so you get two 8 footers.

Laurie Chavez, Applicant: No, there are four doors on each unit. It's forty-foot conics. So, it could be an 8x40. But I believe it's a 10x40 I could be wrong.

Member Kent: I think they are usually a 10x40. Witch means these numbers are all off. Cause then it would be 5x10 for each unit.

Member Luchini: So, the conics would be cut?

Laurie Chavez, Applicant: No, it's one shipping container.

Member Luchini: Ok so not cut but sectioned.

Laurie Chavez, Applicant: Its one shipping container brand new with roll up doors. So, there are four roll up doors.

Member Kent: They are roll up doors or they are shipping container doors? I mean shipping container doors have a big heavy hinge you pull two doors out. Ok so it's not shipping container doors.

Vice Chairman Buhler: You're going to add roll up doors to these containers?

Laurie Chavez, Applicant: No.

Member Kent: You're buying them this way?

Laurie Chavez, Applicant: Yes.

Chairman Sisney: What's this picture of?

Vice Chairman Buhler: That shipping container that's a normal door.

Laurie Chavez, Applicant: That's the end.

Member Kent: Those are the ends of your units?

Laurie Chavez, Applicant: Yes, each end has a door that opens.

Member Kent: There are no doors on the side in these pictures.

Laurie Chavez, Applicant: I apologize they are not roll up.

Member Kent: They are sealed, whether out shipping container doors?

Laurie Chavez, Applicant: yes.

Member Luchini: One unit.

Member Kent: Well, they came that way you can see.

Laurie Chavez, Applicant: They are going to be butted up behind each other.

Member Buhler: Are you going to be able to enter it through 5th St?

Laurie Chavez, Applicant: You can enter it through 5th St, or you can enter in through the alley.

Chairman Sisney: Do you know what the elevation is relative to Broadway to the bottom of your lot? I know it's down there. Do you know how tall these containers are?

Laurie Chavez, Applicant: No.

Chairman Sisney: There is railing there now. What's going to happen with that? To keep people from? Are you going to fence that off or anything?

Laurie Chavez, Applicant: No.

Member Luchini: You are putting them in phases?

Laurie Chavez, Applicant: Yes, we were told to just show one phase at first. I didn't know how we were going to do it and then we could substantially add a few more.

Chairman Sisney: Are you going to have a dumpster?

Laurie Chavez, Applicant: Probably yes.

Chairman Sisney: Where is it going to go?

Laurie Chavez, Applicant: I don't know yet.

Chairman Sisney: It doesn't look like there is much room left.

Laurie Chavez, Applicant: That just something that's in the planning right now.

Chairman Sisney: Do you know how tall these units are?

Laurie Chavez, Applicant: No, I don't you asked me that already I don't know how tall they are. They might be 12 feet tall, I'm not sure 10 feet tall.

Member Kent: They are probably about 10 feet. We could even look at a standard shipping container.

Laurie Chavez, Applicant: I apologize I didn't know I was getting up here to speak or I would have better answers for you.

Vice Chairman Buhler: Is it just going to be gravel, dirt? You are just setting them on dirt?

Laurie Chavez, Applicant: Yes Ma'am.

Member Kent: 40 feet long 8 feet wide and 8.6 feet tall. So, they are only 8 feet wide.

Laurie: These are actually taller. These are taller than the normal standards. I think they are either a 9 or a 10 foot.

Member Kent: You don't know how wide?

Chairman Sisney: Right here 9 foot 6 inches says on the door.

Vice Chairman Buhler: Assistant City Manager Alvarez, for commercial do these meet all the qualifications for commercial? I know you approved them for people to use them for storage at their home. Are there rules for commercial?

Assistant City Manager Alvarez: In commercial containers may not exceed 46 feet in length and 10 feet in height. They have to be 10 feet from a main structure, but they don't have a main structure there. That's why they are requesting the variance. Also, no less than 5 feet from the property line on the side and rear yards. That's in your section that I included in your packet.

Vice Chairman Buhler: Well, I hope the city will require you to have a fence. Because we have storage units that don't have a fence and people try to break into them.

Laurie Chavez, Applicant: I'll put a fence up if they are wanting a fence put up.

Vice Chairman Buhler: Well, the city would be.

Assistant City Manager Alvarez: That's not a requirement of the municipal code right now.

Laurie Chavez, Applicant: I mean these units are very solid.

Vice Chairman Buhler: I know I have one and its nice that your using new ones.

Laurie Chavez, Applicant: We have a construction company, and we built a shop out of these units and then put a roof over the top if it.

Member Kent: If you don't have a security gate, will you have security cameras?

Laurie Chavez, Applicant: Yes, we will probably put some cameras up.

Member Kent: Also signing indicating as such? So, people aren't enticed to come on the property when they shouldn't be.

Vice Chairman Buhler: The person that sent the letter in that was one of the questions. She wanted to know if the property would be fenced, that was a concern.

Member Kent: Will it interfere with the views?

Laurie Chavez, Applicant: It will not interfere with and views.

Vice Chairman Buhler: Also, they are also worried their property taxes and they are worried about crime. About it bringing crime.

Laurie Chavez, Applicant: There is a lot of crime in this town and that won't bring any extra crime. It will bring security to people to put their stuff in storage.

Vice Chairman Buhler: They also wanted to know if there would be and dirt work with leveling.

Laurie Chavez, Applicant: It would definitely be leveled we a dirt contracture.

Vice Chairman Buhler: Ok, good.

Chairman Sisney: The way I read that question was, where that going to bring it up to the level of Date St? Which would be like 12 feet, I don't think that's happening that would require all kinds.

Assistant City Manager Alvarez: Just make sure as you guys are asking and get answers to your question. You remember the variance is being requested for allowing shipping containers to be put there without a main structure in there. As well as the second step you will go through will be the variance request for the façade. That is what the public hearing is about.

Chairman Sisney: I don't like hypothetical questions, but I am going to throw one out here. How do you feel about graffiti?

Laurie Chavez, Applicant: I don't like graffiti and if they graffiti it ill spray it and make it match the same color that it was.

Chairman Sisney: Thank you.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Member Kent: I will make a motion to deny the request primarily and the fact that there will be no security fencing gates whatever you want to call it around the property.

Vice Chairman Buhler: We are only here over the façade.

Assistant City Manager Alvarez: The first one is for placement of shipping containers without a main structure. The second action you guys will take will be the façade.

Member Kent: Is fence façade? Are security gates considered façade?

Assistant City Manager Alvarez: No.

Vice Chairman Buhler: It's the bottom of the building. It's the thing with Gary.

Assistant City Manager Alvarez: there is nothing that requires a fence on that property.

City Clerk Torres: The first action will be on shipping containers. The second action will be for the placement.

Member Luchini: Why does it need a primary building on the premises?

Assistant City Manager Alvarez: That's the way it was written within the municipal code. I think not necessarily the thought process moving forward of the potential of storage units but so that somebody doesn't put a whole bunch of shipping containers on their property to store all of their stuff and not as an actual business of storage allowing people to rent a storage unit.

Vice Chairman Buhler: You guys are going to adopt some rules also about the storage containers is that correct?

Assistant City Manager Alvarez: This is a recent ordinance I haven't heard anything being any direction from the commission on the potential revision of this one. As the planning and zoning commission, if there is changes you want to make on anything you can put those one the agenda and have that discussion to recommend those changes, then they go through the process through the commission.

Vice chairman Buhler: She is doing new containers that's a good thing. But if someone where to put up a container with writing all over it in my neighborhood I wouldn't like that.

Assistant City Manager Alvarez: There is a different process for residential versus commercial. Everybody that does the residential has to come to you guys and then you can make those specifications during that approval process.

Vice Chairman Buhler: That's good to know.

Assistant City Manager Alvarez: The first motion would be to approve or deny the variance request for the shipping containers without a main structure.

Member Luchini made a motion to recommend approval to the City Commission for a Variance request at Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Shipping Containers as per Section 11-10-4 A (3). - Vice Chairman Buhler seconded the motion. Roll call vote was taken.

Chris Sisney, Chairman voted aye.

Susan Buhler, Vice Chairman voted aye.

Esther Luchini, Member voted aye.

Lisa Kent, Member voted nay.

Motion carried with a 3-1 vote.

- c) Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Metal Buildings as per Chapter 16 - COMPREHENSIVE PLANNING AND ZONING CODE ARTICLE XIV. - DEVELOPMENT STANDARDS Sec. 11-14-12. - Metal Buildings.**

Chairman Sisney opened the public hearing.

Chairman Sisney: It's almost impossible on these to veneer them because of the way the doors are.

Vice Chairman Buhler: It would be very hard. Also, the way it is on the outside.

Laurie Chavez, Applicant: I could tell you that as a business owner in Sierra County my husband is from Sierra County been here his whole life. We will maintain that property.

City Clerk Torres: The motion would be to recommend approval or denial of the variance request. As presented if you don't agree with what they are presenting then you would vote against.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Vice Chairman Buhler made a motion to recommend approval to the City Commission for a Variance request at 500 N. Date Street for the placement of Metal Buildings. Member Kent seconded the motion. Roll call vote was taken.

**Chris Sisney, Chairman voted Aye.
Susan Buhler, Vice Chairman voted Aye.
Esther Luchini, Member voted Nay.
Lisa Kent, Member voted Aye.**

Motion carries with a 3-1 vote.

d) Public Hearing/Discussion/Action: Special Use Permit 3500-3710 E. 3rd Multi Animal Permit– Annual Renewal.

Assistant City Manager Alvarez: My agenda action form didn't say East Third, but the public hearing notice did. This is just an annual renewal of a multi animal permit for kennel permit. Applicant submitted all applicable documents. Our code enforcement officer who is acting as animal control officer went out and did the inspection and saw no concerns. He has approved both on the code enforcement side as well as the animal control side. Applicants are present if you have any questions.

Chairman Sisney opened the public hearing.

Proponents:

Amanda Forrister, applicant: I'm here on behalf of my husband for the kennel multi animal use permit for our property. It's just an annual renewal previously approved permit.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Chairman Sisney made a motion to recommend approval to the City Commission for a Special Use Permit at 3500-3710 E. 3rd Multi Animal Permit– Annual Renewal. Vice Chairman Buhler seconded the motion. Roll call vote was taken. Motion carried unanimously.

5. REPORTS FROM THE BOARD:

There were no reports from the board.

6. REPORTS FROM STAFF:

Assistant City Manager Alvarez: Reported on Tin St mobile homes she is waiting on city attorney. Will have it on the next agenda.

City Clerk Torres: As I emailed and spoke with you guys this morning, we will have a workshop next Wednesday at 9am to go over combining the boards. You guys will be able to give you input on that.

Vice Chairman Buhler: I won't be here. If there is any kind of vote I give my proxy to Chris.

Assistant City Manager Alvarez: There is no vote at this time. It's just a workshop. They will be reviewing submission of the commission they requested for us to combine those. They are actually cleaning up all the ordinances it pertains to advisory boards. We have some advisory boards listed in there that haven't been active in a lot of years. So, it's the entire advisory board ordinance I think Angela is going to send you all a copy. The workshop is to review, they might make some recommendations on stuff that's in there. Once we go through that workshop process it will have to go back to the commission for approval to publish. Then it will go back to the commission again for final adoption and public hearing. There is lots of time for input if you're not going to be here. I would say take the time to review and if you have recommendations, suggestions or questions send them to Angela in an email. She will make sure that everybody that is in attendance for our commission as well as any of the boards all have a copy.

Vice Chairman Buhler: It would be nice to have a report of what was talked about after the meeting.

City Clerk Torres: There will be minutes. It's also attached in the email I sent this morning.

Vice Chairman Buhler: We hope that we get to stay our own board. It would be nice to have one more member for the planning and zoning. That would be my contribution. Then we would get to finish our terms and maybe if someone wanted to do it again they could reup. It would be nice to have one more member.

Assistant City Manager Alvarez: Some of our other existing boards have virtually no member, so I know one of the things we talked about is that within that ordinance it does talk about if they can't form a seven-member board. We are looking at what existing board members we have for some of these boards and how we could potentially combine you guys. I don't think there is any

thought process where everyone is off the boards, and you have to reapply to be on this one board. There is not very many out there and what we have existing between all of those boards potentially makes a seven-member board then if the commission wants to that route it might be additional duties.

Vice chairman Buhler: I know our board is different than all the other boards. People have to take an oath.

Assistant City Manager Alvarez: They do at the other boards. We do public hearings on the other boards.

Vice Chairman Buhler: Do you?

Assistant City Manager Alvarez: Yes, we have public hearings done.

Vice chairman Buhler: Well, I hope we get to stay.

Assistant City Manager Alvarez: Get all of those in an email and send it over to City Clerk Torres.

7. ADJOURNMENT:

Chairman Sisney adjourned the meeting at 4:53 p.m.

PASSED AND APPROVED ON THIS 10th DAY OF JUNE, 2024.

Chris Sisney, Chairman
Planning & Zoning Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.6

SUBJECT: Discussion/Action - Variance requests at 500 N Date

DEPARTMENT: Community Development

DATE SUBMITTED: May 17, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Review attached P & Z Packet

Public Hearings were held at the P & Z Meeting on 5-13-24

Recommendation:

Accept/Deny P & Z Recommendation

Attachments:

- P & Z Agenda Packet
- Draft Meeting Minutes P & Z 5-13-2024

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-22-2024



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 5-13-2024

ITEM:

1. Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Shipping Containers as per Section 11-10-4 A (3).
2. Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Metal Buildings as per Chapter 16 - Comprehensive Planning and Zoning Code Article XIV. - Development Standards Sec. 11-14-12. - Metal Buildings

BACKGROUND:

Applicant is requesting to place multiple shipping containers at 500 N Date to use as storage units. Property is in the C-1 district. Applicant is requesting a variance from the code for the following allowances:

1. Shipping Containers as per Section 11-10-4 A (3) *Must be a subordinate use or structure customarily incidental to and located on the same lot with the principal use or building – No principal building exists*
2. Comprehensive Planning and Zoning Code Article XIV. - Development Standards Sec. 11-14-12. - Metal Buildings - *All new metal buildings in the C-1 and M-1 Planning and Zoning Districts shall have a facade or veneer consisting of a non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic or other similar approved material on all sides of the structure that face a public street. – No façade or veneer*

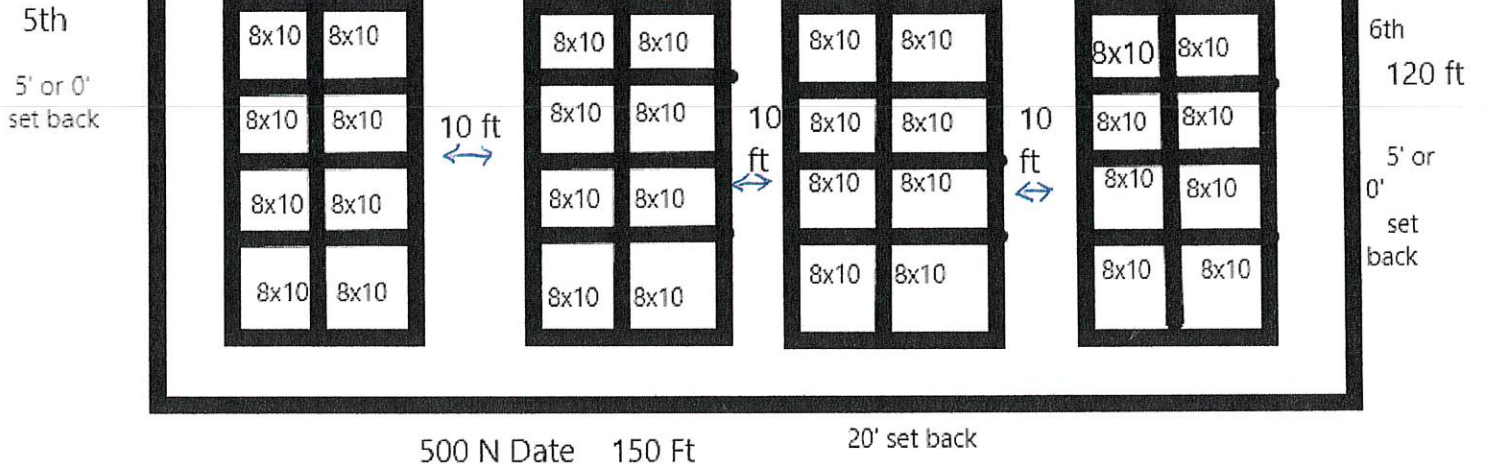
SUPPORT INFORMATION:

- Site Plan
- Storage Unit Pictures
- Parcel/location Map
- Municipal Code References
- Findings of Facts Checklist

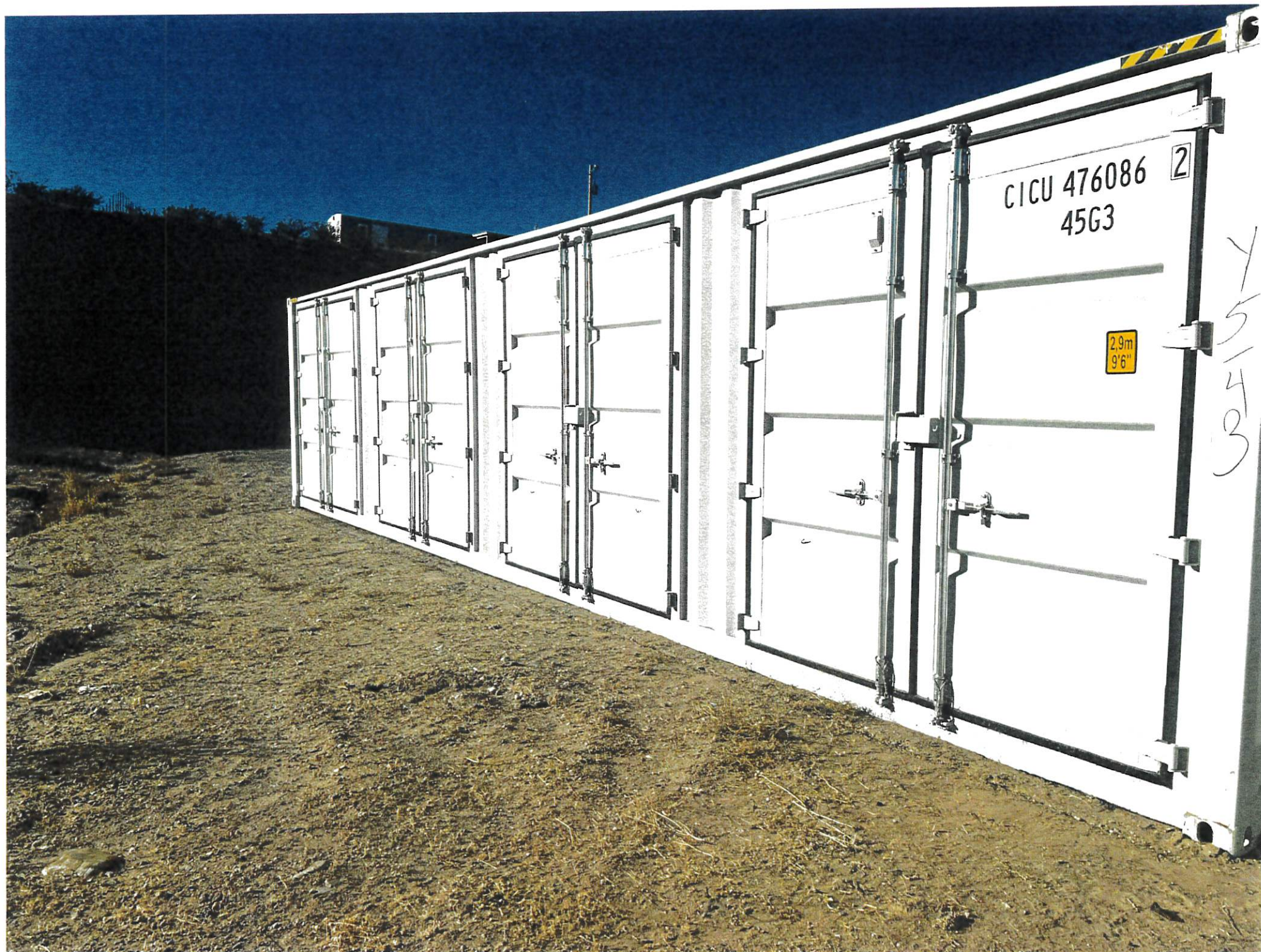
Name of Drafter: Traci Alvarez	: Assistant City Manager	Meeting date 5-13-24
E-mail: talvarez@torcnm.org	Phone: 575-894-6673	

Alley

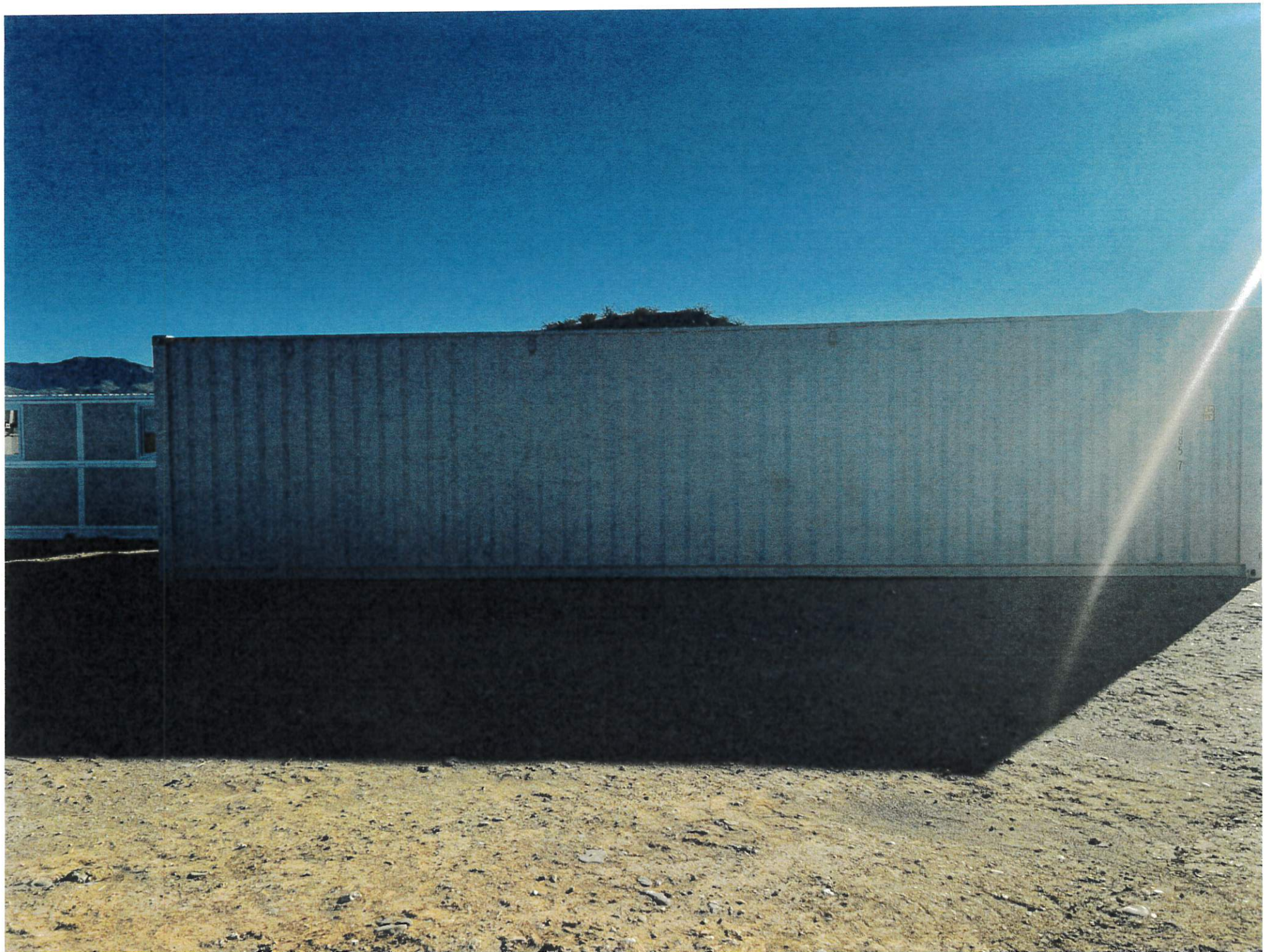
15' set back



ANTHONY + LAURIE CHAVEZ
500 N. DATE ST.
TUC NM 87901









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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.

Sec. 11-10-4. Storage Units/Shipping Containers.

The regulation of storage units/shipping containers within the city limits of the City of Truth or Consequences shall be controlled by and shall conform to the regulations prescribed in this section. A storage unit/shipping container means a unit originally or specifically designed or used to store goods or merchandise during shipping or hauling by container ships, rail, commercial trucks, or other types of transportation.

- A. Placement of storage units/shipping containers within C-1, M-1 and T-1 districts are permitted as accessory storage units as long as they are not used for dwelling purposes and with the following exceptions:
 - 1. Conditional Use Permit is required for placement of all storage units/shipping containers within the boundaries of the Metropolitan Redevelopment Area (MRA) and Historic MainStreet District Area defined in the Downtown Master Plan.
 - 2. Containers may not exceed 46 feet in length and 10 feet in height
 - 3. Must be a subordinate use or structure customarily incidental to and located on the same lot with the principal use or building
 - 4. Interior lot: No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards
 - 5. Lots with more than one street frontage: No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
 - 6. May not encroach in the clear-sight triangle.
 - 7. Shall not create unsanitary or hazardous premises as outlined in Sec 6-74 and 6-75.
- B. Placement of storage units/shipping containers within Residential Districts is allowed as accessory storage units as long as they are not used for dwelling purposes and with the following exceptions:
 - 1. Conditional Use Permit is required for placement of all storage units/shipping containers within the following districts: R-1, R-2, R-3, R-4 and RR-1.
 - 2. Containers may not exceed 46 feet in length and 10 feet in height
 - 3. Must be a subordinate use or structure customarily incidental to and located on the same lot with the principal use or building
 - 4. Interior lot: No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards
 - 5. Lots with more than one street frontage: No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
 - 6. May not encroach in the clear-sight triangle.
 - 7. Shall not create unsanitary or hazardous premises as outlined in Sec 6-74 and 6-75.
- C. Temporary placement of storage containers within Conditional Use Areas are allowed through written approval of the Designated Zoning Official as long as they are not used for dwelling purposes for:
 - 1. The purpose of moving household contents in to or out of a house are allowed for up to 30 days in any 12-month period and can only be on the property or driveway.

-
2. The purpose of construction projects are allowed up to 3 months in any 12-month period from the time it's put on the construction site. The designated zoning official or designee may grant an extension but only if it is determined that:
- a. The storage unit/shipping container is located on a site with an active building permit
 - b. The storage container is necessary part of the construction process
 - c. Not be allowed in public right-of-way
 - d. Construction is moving forward in a timely manner and in accordance with generally accepted industry standards.

(Ord. No. 731 , § 1, 8-10-22)

Sec. 11-14-12. Metal Buildings.

All new metal buildings in the C-1 and M-1 Planning and Zoning Districts shall have a facade or veneer consisting of a non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic or other similar approved material on all sides of the structure that face a public street.

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES**

MONDAY, MAY 13, 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, May 13, 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
Angela A. Torres, City Clerk
Katy Martinez, City Clerk Admin Assistant

1. APPROVAL OF AGENDA:

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

2. APPROVAL OF MINUTES:

a) April 8, 2024.

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

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

There were no comments from the public.

City Clerk Torres swore in the participants for the public hearings.

4. PUBLIC HEARINGS (5 Minute Rule Applies)

- a) Public Hearing/Discussion/Action: Variance request at 2090 S. Broadway for the placement of Metal Buildings as per Chapter 16 - COMPREHENSIVE PLANNING AND ZONING CODE ARTICLE XIV. - DEVELOPMENT STANDARDS Sec. 11-14-12. - Metal Buildings.**

Assistant City Manager Alvarez: Chairmen, member of the board property is in the C-1 district applicant is requesting a variance from the code for the section that states all metal buildings should have a façade or veneer consisting of the non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic, or other similar approved material on all sides of the structure that face a public street. The applicant is requesting no façade or veneer in your agenda packet you have the attached letter from the applicant as well as your site plan the parcel map your code references as well as the findings and fact check list and applicant is in attendance. Mr. Gary Whitehead.

Chairman Sisney opened the public hearing.

Proponents:

Gary Whitehead, Applicant: Thank you members of the committee, it's good to be here in front of you today. We are constructing and requested a permit approval for a new storage facility on this particular property were installing 22 standard storage units like you would see anywhere. They are metal construction they come in a kit. They are prefab. We have those at 510 s Broadway that's our first project that we have. When we started the construction project, we had intended to put the buildings to where the doors faced the outside. Where they would face Broadway but based on setbacks and the design, we needed to use we needed to face off Mercury was the best way to access. Once we got that understanding we broke the building apart into two sections so we could create a safer environment in the middle of our storage units so we don't have to put a fence you will be able to drive straight. We have a metal electric gate for our customers. Effectively we didn't envision that we would be required to do a façade on the outside of the storage. What I would point out in the area the other thing to kind of tie into the neighborhood Tony if you know him from Tony's Café. He's already put up a white six-foot fence around his entire property so we ordered our buildings in white and grey so they would at least match the neighborhood. We did that before we had even understood we would have to do a façade. So, at the end of the day, we could say that the building across the street is a metal building without a façade. I don't think Tony has any objections and so we would ask for a variance of the need to put the façade on the building. It's not going to create any safe

and not going to create any hazard and it's probably an eight-thousand-dollar expense with we could use somewhere else on the project. So, I'll stand for questions.

Member Kent: So, these are going to be white metal buildings you said?

Gary Whitehead, Applicant: That's correct.

Member Kent: So, driving down Broadway you would just see the back side?

Gary Whitehead, Applicant: You would see the back side a white metal with grey trim. And then landscaped you've driven by the project we had to bring in considerable fill, so we are going to landscape that, so we don't have any runoff or any issues with that and then get black metal fencing on the Mercury side for gates and drive through.

Vice Chairman Buhler: Will you have lighting?

Gary Whitehead, Applicant: Yes. The inside of the facility will be lite. We won't have any exterior lighting but again the inside.

Member Kent: When you say inside between the buildings?

Gary Whitehead, Applicant: Between the buildings are twenty-one feet between the inside the buildings in that space where you would drive in and access your storage units. So, we will light that facility so again customers will feel safe and invited to come in at night. And provide some security.

Member Kent: When you say you will do landscaping on the Broadway side because you said you had to bring in a lot of fill dirt and stuff and like landscaping are you going to plant anything.

Gary Whitehead, Applicant: No there will be no plan it will be native. It's a pretty good slope so the contractor we are working with suggested that we use the bigger rock that will hold it all and prevent run offs. So, it will be landscaped kind of that way.

Vice Chairman Buhler: What kind of fencing are you putting on it?

Gary Whitehead, Applicant: So, on the front on the Mercury side and on the side up against Tony's it will have a welded six-foot open slat fence so you can't crawl over and then with an electric gate.

Member Luchini: And on Broadway side?

Gary Whitehead, Applicant: Well, there will be no gate on Broadway you won't be able to get in or see in from Broadway.

Assistant City Manager Alvarez: His building plans have been submitted to the city and they've gone through the engineering because it was an undeveloped site. It was sent all the way up to our engineer that over sees, and they've done the full review on all of his plans submittal including the drainage including the landscaping and everything and it's all approved per our municipal code.

Member Kent: Except the façade?

Gary: we even have approval for the façade I submitted a plan to do a four-foot wings coat typical on a metal building, and I know that was approved so all we are asking is that we don't have to put that wings coat on it because it would be consistent with our other projects.

Vice Chairman Buhler: I make a motion that we approve. I recommend you not to have a façade and the extra expense. For this I make a motion.

Chairman Sisney: Nothing personal Mr. Whitehead just trying to take care of business. There is no hardship involved here, it's just you're asking not to do what has been put into the code. I'm here to protect it's my job to protect the laws of the City of Truth or Consequences and I'm just curious you're asking without a hardship, and this will set a precedent. So now with a precedent our hands are tied at that point.

Gary Whitehead, Applicant: well, I would say to you that the precedent is already set sir. Metal buildings have been constructed in the city for more than 25 years and it's become a very known product. They are spread out the city in lots of places and I think in geographical locations where you find that they are already in, and they are not going to affect the neighborhood they are not going to affect the aesthetics. I think you have the ability to say we could get by with that. Now I'll give you a good example which I think you did right. The family dollar on top of the hill. It's in a beautiful location, it's in a fantastic spot, it overlooks the city of Truth or Consequences that potentially would not have been as quality of a product if it would have just been a metal building standing out there for the world to see. So, I think you have the ability to protect both, and the precedent is already set so not to be argumentative with all due respect but. And I constructed 25 units in 2018 and we were not required to put that façade. So again, I don't know if that was the code in 2017.

Chairman Sisney: So, let me ask a question of Mrs. Alvarez. When did this code come into effect?

Assistant City Manager Alvarez: I didn't look and see. Let me see you guys have the section of the code.

Chairman Sisney: Because I just want to establish weather this will be a precedent or not. If there wasn't a law, then there wasn't a precedent until it became a law.

Assistant City Manager: So, the city clerk might have it. She has the ability to look it up in the code. I don't have that noted in my stuff.

Chairman Sisney: Well, their looking at that let me ask another question. I'm sorry to interrupt.

Assistant City Manager: It might have been in there for some time.

Member Luchini: I will make a comment. That happened to us with H&O Tire and Feed. We did have to put a wood façade on the building that faced Date. We didn't ask for a variance we went ahead and put it.

Chairman Sisney: I was a little confused when you said there was no fence going to be on Broadway. So, the building is going to establish a wall itself.

Gary Whitehead, Applicant: That's correct.

Chairman Sisney: and the fences will be up to the buildings.

Gary Whitehead, Applicant: The fences will be on the mercury side. Going north and south. So again, on mercury that's where the fences will be but on Broadway it will be just the solid building.

Member Luchini: What about on the east side towards Tony's?

Gary Whitehead, Applicant: Tony already has a six-foot wall and it's not required by the code if we were to do that. It only requires the sides that face a public street.

Member Luchini: But your gate? Your security gate?

Gary Whitehead, Applicant: There will be a security gate on that side as well. Cause we would want the whole interior of the storage to be secure.

Chairman Sisney: So, in reality the only part of the building that would require any façade would be Broadway and this much of the corner of that building that going down mercury cause then it becomes a fence?

Gary Whitehead, Applicant: If we were getting technical, I would say yes but if the deserve the committee and the commission is for me to put a façade, I would probably have to go down all of mercury just so it would aesthetically look correct right.

Chairman Sisney: But you wouldn't have to do the back side then?

Gary Whitehead, Applicant: I wouldn't have to do the alley it isn't required on the alley side.

Chairman Sisney: ok

City Clerk Torres: On the code it's not really showing me when it was generated but it looks like it's been here for a while. I don't recall us making any amendments to this portion of the code within the last five or more years. It's kind of an older.

Member Luchini: we are having a workshop aren't we regarding this kind of topic today? No those were the storage containers.

City Clerk Torres: so yeah, the storage containers they are going to do a workshop and they are going to change that. I'm not sure when they are. That won't be the same one that I called you guys on for this morning.

Chairman Sisney: I have another question for you Mr. Whitehead if don't mind. You said these are kits are they roll offs?

Gary Whitehead, Applicant: No, this is a designed mini storage product that we purchased.

Chairman Sisney: So, you pour a slab?

Gary Whitehead, Applicant: It's got a concrete slab.

Chairman Sisney: So, these things are staying.

Gary: these are permanent structures. They are designed engineered all stamped. They are consistent with any mini storage that you would see in any town and place you would drive you would see they are consistent with that product. Roll up doors you know permanent.

Chairman Sisney: thank you. I have satisfied my questions if anyone wants to ask a question or continue, I'm done.

City Clerk Torres: So, I know we don't have anyone else who signed up but just to go through protocol before we move forward with the motion we will go ahead and ask if anybody else wants to speak if they don't then we can close the public hearing and then you guys can do the motion and then we will do that process for each one of the public hearings.

Member Luchini: what was the façade that you had designed so far?

Gary Whitehead, Applicant: We found a product called a wings coat. It's three and a half foot I think 42 inches and it's just fake bricks they are Styrofoam looks like there is plenty of products on the market that you could buy, and it attaches to the building it would look ok. It's just a lot of money. But you know again if that the way you want to perceive it's understandable, I have no problem with it either.

Vice Chairman Buhler: I would like to say one thing. People are building homes now out of metal buildings, and they have their home in it, and they have their shop in it. They have numerous things in them and personally I don't have a problem with it at all. cause you know it's a profiled metal to correct kind of?

Gary Whitehead, Applicant: Yeah, I think that's what it's called. Again, chairman and vice chair I don't think I would be asking, and I think I would accept it being harder if I was in the middle of downtown T or C. I'm effectively saying I'm in an area that already has used metal buildings there is not a lot of construction. The neighbor next to me has the same exact product in a six-foot wall. This building will look no different. So that's why I'm asking for the variance. My façade is not going to make that neighborhood look any better or worse than what it already does. If I do the building right it will be a nice product it will be clean it will look good it will be a nice improvement and little bit of economic development you know all the buzz works but you know I think I'm not asking for something that's outside the scope other than in that particular neighborhood \$5000 in fake brick are going to make us any better or worse. Where if I was building next to Bank of the Southwest downtown. The Bank of the Southwest might say gosh we have a problem with that we spent lots of money you know what I'm saying. So, I feel like that's the only request and again I appreciate the opportunity to speak and understand whichever way we have to go.

Chairman Sisney: Thank you Mr. Whitehead.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Vice Chairman Buhler made a motion to recommend approval to the City Commission for a Variance request at 2090 S. Broadway for the placement of Metal Buildings. Member Kent seconded the motion. Roll call vote was taken.

**Chris Sisney, Chairman voted nay.
Susan Buhler, Vice Chairman voted aye.
Esther Luchini, Member voted nay.
Lisa Kent, Member voted aye.**

Motion tied with a 2-2 vote.

City Clerk Torres: That was a tied vote. Does anyone else want to make another motion or do you want to just take that motion to the commission.

Vice Chairman Buhler: Well, they are the are the ultimate deciders anyways.

Member Luchini: We are just approving these variances as they come up and the ordinance that are in the book and null and void if we keep approving these variances.

Gary Whitehead, Applicant: I understand and accept it.

Member Luchini: I do believe that you have a quality product that will look nice and the neighbors.

Gary Whitehead, Applicant: Unfortunately, it's one of those it happens to the developer that doesn't read all the codes so its ignorance right when you get your final approval, and you go oh great it's all approved and you read through everything and then it's saying and you have to put a façade. You know I don't know how we fix that but it's ok.

City Clerk Torres: So, if I could just make a comment, so I think the reason why add a variance request to the code is because there are certain circumstances to where like the property is trashy and it wouldn't look good or something like that then of course those would be reasons for you guys to deny it. But sometimes stuff like this could be a benefit or you know what I mean or if there is no opponent. I'm not trying to sway your vote I'm just trying to explain why they do have variances and I know it seems like we are going against the code but that was the reason behind them actually adding a variance so you could do it by a case-by-case basis and kind of make a decision on if you wanted to approve it or not.

Assistant City Manager Alvarez: If I could expand on that. That's why what is included in your packet that every public hearing for planning and zoning commission hears is supposed to be based on the seven findings of facts. That's to help you make a decision for or against.

Member Kent: I mean personally given industrial ness of that area. I mean there is an auto mechanic across the street with fifty cars parked all over the place you can't even drive by half the time. I would rather see a nice new metal building than fake brick. So, I'm not going to push to say you have to put fake brick up. But I get its case by case and everybody has their thoughts.

City Clerk Torres: We could move on to the next one.

Chairman Sisney: You know it goes to city council.

Member Luchini: Well, you know everybody starts with good intentions when they build something. You know I'm sure Hastys across the street didn't intend to have fifty cars outside his business by now, you know twenty or thirty years later. And whether a façade was required at the time he put his building in we don't know. I would say no it was not that was that long ago. I know we could trust you to have a good product, a clean product, a healthy product, service. So, then it snowballs. One bad apple is going to ruin it for everybody else.

b) Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Shipping Containers as per Section 11-10-4 A (3).

Assistant City Manager Alvarez: The next two items are applicable to this property, so I'm going to present them together even though you guys have to vote on each variance separately. They are kind of tied into one in the same. The first variance request is for the placement of shipping containers per our municipal code shipping containers are allowed in the commercial district, but they must be subordinate to a main use or structure. The applicant is requesting to use shipping containers for the purpose of storage units so there is no main structure on that property and then similar to the variance request that we just heard they are also requesting a variance for no façade or veneer in the commercial district. You guys have your sight plan in there as well as pictures of what the storage units look like or the shipping containers that are designed to be storage units and all of you supporting documents sight plans, parcel map where these would be located and then as City Clerk Torres let us know there was the email that came through that has some questions as well. Applicants are in attendance to answer and questions.

Chairman Sisney opened the public hearing.

Proponents:

Laurie Chavez, Applicant: I have 500 N Date St. I'm not really a good speaker but I'm here for whatever it is that you need to ask of me. The shipping containers that we want to place on the property are brand new. They are 10x40 units so there would be four units on each side and the proposal is to set up to units back-to-back to start. Then possibly put two to four more on the property. They are brand new they are a cream color so they will mix in fine. We sit down off of Date St.

Vice Chairman Buhler: Is there any flood problem with that property that you know of?

Laurie Chavez, Applicant: Not that I know of.

Assistant City Manager Alvarez: This still has to go through planning and zoning portion. It came to variance first before we went through the whole process of submitting.

Vice Chairman Buhler: Do you plan to have lighting?

Laurie Chavez, Applicant: Yes, on each unit. Each unit has a roll up door and there is going to be a solar motion light in front of each unit.

Vice Chairman Buhler: Can you drive up to your unit? How would you get to your unit?

Laurie Chavez, Applicant: Yes, you will be able to drive up to them.

Vice Chairman Buhler: All of them?

Laurie Chavez, Applicant: Yes.

Vice Chairman Buhler: Ok, that's good.

Member Kent: There will be no security gates on the property?

Laurie Chavez, Applicant: No security gates.

Vice Chairman Buhler: No fence?

Laurie Chavez, Applicant: No fence unless we are told to put one up, we can do that. But they are secure units, they are extremely thick. Dividing units between each are not going to be wood they are going to be actual metal. So, nobody could get into each other's units.

Vice Chairman Buhler: You know they make a box to where you can have the lock in the box where somebody can't get a pair of bolt cutters. You might check into that.

Laurie Chavez, Applicant: Its up to each individual person that rents the unit to put their own lock on there.

Vice Chairman Buhler: Right.

Member Kent: Would you do any landscaping along Date St?

Laurie Chavez, Applicant: We are sitting down below Date St. You're only going to see the tops of the units themselves.

Member Kent: How far down are you? I can't tell on the map.

Laurie Chavez, Applicant: Its where the only Circle C Motel use to be. Right across from the catholic church.

Member Kent: That's probably before my time.

Laurie Chavez, Applicant: The Hot Springs Cannabis is right next door. They have a conic outside.

Chairman Sisney: You stated that they are 10x40 are they 16x40?

Laurie Chavez, Applicant: No, they are 10x40.

Chairman Sisney: The drawling shows each unit being 8x10.

Laurie Chavez, Applicant: Maybe I miss quoted. Maybe they are 8x10.

Chairman Sisney: So, its 16x10? It would be 16 wide, so you get two 8 footers.

Laurie Chavez, Applicant: No, there are four doors on each unit. It's forty-foot conics. So, it could be an 8x40. But I believe it's a 10x40 I could be wrong.

Member Kent: I think they are usually a 10x40. Witch means these numbers are all off. Cause then it would be 5x10 for each unit.

Member Luchini: So, the conics would be cut?

Laurie Chavez, Applicant: No, it's one shipping container.

Member Luchini: Ok so not cut but sectioned.

Laurie Chavez, Applicant: Its one shipping container brand new with roll up doors. So, there are four roll up doors.

Member Kent: They are roll up doors or they are shipping container doors? I mean shipping container doors have a big heavy hinge you pull two doors out. Ok so it's not shipping container doors.

Vice Chairman Buhler: You're going to add roll up doors to these containers?

Laurie Chavez, Applicant: No.

Member Kent: You're buying them this way?

Laurie Chavez, Applicant: Yes.

Chairman Sisney: What's this picture of?

Vice Chairman Buhler: That shipping container that's a normal door.

Laurie Chavez, Applicant: That's the end.

Member Kent: Those are the ends of your units?

Laurie Chavez, Applicant: Yes, each end has a door that opens.

Member Kent: There are no doors on the side in these pictures.

Laurie Chavez, Applicant: I apologize they are not roll up.

Member Kent: They are sealed, whether out shipping container doors?

Laurie Chavez, Applicant: yes.

Member Luchini: One unit.

Member Kent: Well, they came that way you can see.

Laurie Chavez, Applicant: They are going to be butted up behind each other.

Member Buhler: Are you going to be able to enter it through 5th St?

Laurie Chavez, Applicant: You can enter it through 5th St, or you can enter in through the alley.
Chairman Sisney: Do you know what the elevation is relative to Broadway to the bottom of your lot? I know it's down there. Do you know how tall these containers are?

Laurie Chavez, Applicant: No.

Chairman Sisney: There is railing there now. What's going to happen with that? To keep people from? Are you going to fence that off or anything?

Laurie Chavez, Applicant: No.

Member Luchini: You are putting them in phases?

Laurie Chavez, Applicant: Yes, we were told to just show one phase at first. I didn't know how we were going to do it and then we could substantially add a few more.

Chairman Sisney: Are you going to have a dumpster?

Laurie Chavez, Applicant: Probably yes.

Chairman Sisney: Where is it going to go?

Laurie Chavez, Applicant: I don't know yet.

Chairman Sisney: It doesn't look like there is much room left.

Laurie Chavez, Applicant: That just something that's in the planning right now.

Chairman Sisney: Do you know how tall these units are?

Laurie Chavez, Applicant: No, I don't you asked me that already I don't know how tall they are. They might be 12 feet tall, I'm not sure 10 feet tall.

Member Kent: They are probably about 10 feet. We could even look at a standard shipping container.

Laurie Chavez, Applicant: I apologize I didn't know I was getting up here to speak or I would have better answers for you.

Vice Chairman Buhler: Is it just going to be gravel, dirt? You are just setting them on dirt?

Laurie Chavez, Applicant: Yes Ma'am.

Member Kent: 40 feet long 8 feet wide and 8.6 feet tall. So, they are only 8 feet wide.

Laurie: These are actually taller. These are taller than the normal standards. I think they are either a 9 or a 10 foot.

Member Kent: You don't know how wide?

Chairman Sisney: Right here 9 foot 6 inches says on the door.

Vice Chairman Buhler: Assistant City Manager Alvarez, for commercial do these meet all the qualifications for commercial? I know you approved them for people to use them for storage at their home. Are there rules for commercial?

Assistant City Manager Alvarez: In commercial containers may not exceed 46 feet in length and 10 feet in height. They have to be 10 feet from a main structure, but they don't have a main structure there. That's why they are requesting the variance. Also, no less than 5 feet from the property line on the side and rear yards. That's in your section that I included in your packet.

Vice Chairman Buhler: Well, I hope the city will require you to have a fence. Because we have storage units that don't have a fence and people try to break into them.

Laurie Chavez, Applicant: I'll put a fence up if they are wanting a fence put up.

Vice Chairman Buhler: Well, the city would be.

Assistant City Manager Alvarez: That's not a requirement of the municipal code right now.

Laurie Chavez, Applicant: I mean these units are very solid.

Vice Chairman Buhler: I know I have one and its nice that your using new ones.

Laurie Chavez, Applicant: We have a construction company, and we built a shop out of these units and then put a roof over the top if it.

Member Kent: If you don't have a security gate, will you have security cameras?

Laurie Chavez, Applicant: Yes, we will probably put some cameras up.

Member Kent: Also signing indicating as such? So, people aren't enticed to come on the property when they shouldn't be.

Vice Chairman Buhler: The person that sent the letter in that was one of the questions. She wanted to know if the property would be fenced, that was a concern.

Member Kent: Will it interfere with the views?

Laurie Chavez, Applicant: It will not interfere with and views.

Vice Chairman Buhler: Also, they are also worried their property taxes and they are worried about crime. About it bringing crime.

Laurie Chavez, Applicant: There is a lot of crime in this town and that won't bring any extra crime. It will bring security to people to put their stuff in storage.

Vice Chairman Buhler: They also wanted to know if there would be and dirt work with leveling.

Laurie Chavez, Applicant: It would definitely be leveled we a dirt contracture.

Vice Chairman Buhler: Ok, good.

Chairman Sisney: The way I read that question was, where that going to bring it up to the level of Date St? Which would be like 12 feet, I don't think that's happening that would require all kinds.

Assistant City Manager Alvarez: Just make sure as you guys are asking and get answers to your question. You remember the variance is being requested for allowing shipping containers to be put there without a main structure in there. As well as the second step you will go through will be the variance request for the façade. That is what the public hearing is about.

Chairman Sisney: I don't like hypothetical questions, but I am going to throw one out here. How do you feel about graffiti?

Laurie Chavez, Applicant: I don't like graffiti and if they graffiti it ill spray it and make it match the same color that it was.

Chairman Sisney: Thank you.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Member Kent: I will make a motion to deny the request primarily and the fact that there will be no security fencing gates whatever you want to call it around the property.

Vice Chairman Buhler: We are only here over the façade.

Assistant City Manager Alvarez: The first one is for placement of shipping containers without a main structure. The second action you guys will take will be the façade.

Member Kent: Is fence façade? Are security gates considered façade?

Assistant City Manager Alvarez: No.

Vice Chairman Buhler: It's the bottom of the building. It's the thing with Gary.

Assistant City Manager Alvarez: there is nothing that requires a fence on that property.

City Clerk Torres: The first action will be on shipping containers. The second action will be for the placement.

Member Luchini: Why does it need a primary building on the premises?

Assistant City Manager Alvarez: That's the way it was written within the municipal code. I think not necessarily the thought process moving forward of the potential of storage units but so that somebody doesn't put a whole bunch of shipping containers on their property to store all of their stuff and not as an actual business of storage allowing people to rent a storage unit.

Vice Chairman Buhler: You guys are going to adopt some rules also about the storage containers is that correct?

Assistant City Manager Alvarez: This is a recent ordinance I haven't heard anything being any direction from the commission on the potential revision of this one. As the planning and zoning commission, if there is changes you want to make on anything you can put those one the agenda and have that discussion to recommend those changes, then they go through the process through the commission.

Vice chairman Buhler: She is doing new containers that's a good thing. But if someone where to put up a container with writing all over it in my neighborhood I wouldn't like that.

Assistant City Manager Alvarez: There is a different process for residential versus commercial. Everybody that does the residential has to come to you guys and then you can make those specifications during that approval process.

Vice Chairman Buhler: That's good to know.

Assistant City Manager Alvarez: The first motion would be to approve or deny the variance request for the shipping containers without a main structure.

Member Luchini made a motion to recommend approval to the City Commission for a Variance request at Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Shipping Containers as per Section 11-10-4 A (3). - Vice Chairman Buhler seconded the motion. Roll call vote was taken.

Chris Sisney, Chairman voted aye.

Susan Buhler, Vice Chairman voted aye.

Esther Luchini, Member voted aye.

Lisa Kent, Member voted nay.

Motion carried with a 3-1 vote.

- c) **Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Metal Buildings as per Chapter 16 - COMPREHENSIVE PLANNING AND ZONING CODE ARTICLE XIV. - DEVELOPMENT STANDARDS Sec. 11-14-12. - Metal Buildings.**

Chairman Sisney opened the public hearing.

Chairman Sisney: Its almost impossible on these to veneer them because of the way the doors are.

Vice Chairman Buhler: It would be very hard. Also, the way it is on the outside.

Laurie Chavez, Applicant: I could tell you that as a business owner in Sierra County my husband is from Sierra County been here his whole life. We will maintain that property.

City Clerk Torres: The motion would be to recommend approval or denial of the variance request. As presented if you don't agree with what they are presenting then you would vote against.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Vice Chairman Buhler made a motion to recommend approval to the City Commission for a Variance request at 500 N. Date Street for the placement of Metal Buildings. Member Kent seconded the motion. Roll call vote was taken.

**Chris Sisney, Chairman voted Aye.
Susan Buhler, Vice Chairman voted Aye.
Esther Luchini, Member voted Nay.
Lisa Kent, Member voted Aye.**

Motion carries with a 3-1 vote.

d) Public Hearing/Discussion/Action: Special Use Permit 3500-3710 E. 3rd Multi Animal Permit– Annual Renewal.

Assistant City Manager Alvarez: My agenda action form didn't say East Third, but the public hearing notice did. This is just an annual renewal of a multi animal permit for kennel permit. Applicant submitted all applicable documents. Our code enforcement officer who is acting as animal control officer went out and did the inspection and saw no concerns. He has approved both on the code enforcement side as well as the animal control side. Applicants are present if you have any questions.

Chairman Sisney opened the public hearing.

Proponents:

Amanda Forrister, applicant: I'm here on behalf of my husband for the kennel multi animal use permit for our property. It's just an annual renewal previously approved permit.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Chairman Sisney made a motion to recommend approval to the City Commission for a Special Use Permit at 3500-3710 E. 3rd Multi Animal Permit– Annual Renewal. Vice Chairman Buhler seconded the motion. Roll call vote was taken. Motion carried unanimously.

5. REPORTS FROM THE BOARD:

There were no reports from the board.

6. REPORTS FROM STAFF:

Assistant City Manager Alvarez: Reported on Tin St mobile homes she is waiting on city attorney. Will have it on the next agenda.

City Clerk Torres: As I emailed and spoke with you guys this morning, we will have a workshop next Wednesday at 9am to go over combining the boards. You guys will be able to give you input on that.

Vice Chairman Buhler: I won't be here. If there is any kind of vote I give my proxy to Chris.

Assistant City Manager Alvarez: There is no vote at this time. It's just a workshop. They will be reviewing submission of the commission they requested for us to combine those. They are actually cleaning up all the ordinances it pertains to advisory boards. We have some advisory boards listed in there that haven't been active in a lot of years. So, it's the entire advisory board ordinance I think Angela is going to send you all a copy. The workshop is to review, they might make some recommendations on stuff that's in there. Once we go through that workshop process it will have to go back to the commission for approval to publish. Then it will go back to the commission again for final adoption and public hearing. There is lots of time for input if you're not going to be here. I would say take the time to review and if you have recommendations, suggestions or questions send them to Angela in an email. She will make sure that everybody that is in attendance for our commission as well as any of the boards all have a copy.

Vice Chairman Buhler: It would be nice to have a report of what was talked about after the meeting.

City Clerk Torres: There will be minutes. It's also attached in the email I sent this morning.

Vice Chairman Buhler: We hope that we get to stay our own board. It would be nice to have one more member for the planning and zoning. That would be my contribution. Then we would get to finish our terms and maybe if someone wanted to do it again they could reup. It would be nice to have one more member.

Assistant City Manager Alvarez: Some of our other existing boards have virtually no member, so I know one of the things we talked about is that within that ordinance it does talk about if they can't form a seven-member board. We are looking at what existing board members we have for some of these boards and how we could potentially combine you guys. I don't think there is any

thought process where everyone is off the boards, and you have to reapply to be on this one board. There is not very many out there and what we have existing between all of those boards potentially makes a seven-member board then if the commission wants to that route it might be additional duties.

Vice chairman Buhler: I know our board is different than all the other boards. People have to take an oath.

Assistant City Manager Alvarez: They do at the other boards. We do public hearings on the other boards.

Vice Chairman Buhler: Do you?

Assistant City Manager Alvarez: Yes, we have public hearings done.

Vice chairman Buhler: Well, I hope we get to stay.

Assistant City Manager Alvarez: Get all of those in an email and send it over to City Clerk Torres.

7. ADJOURNMENT:

Chairman Sisney adjourned the meeting at 4:53 p.m.

PASSED AND APPROVED ON THIS 10th DAY OF JUNE, 2024.

Chris Sisney, Chairman
Planning & Zoning Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.7

SUBJECT: Discussion/Action – Special Use Permit -Multi Animal Permit Annual Renewal 3500-3710 E Third

DEPARTMENT: Community Development

DATE SUBMITTED: May 17, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Review attached P & Z Packet

Public Hearings were held at the P & Z Meeting on 5-13-24

Recommendation:

Accept/Deny P & Z Recommendation

Attachments:

- P & Z Agenda Packet
- Draft Meeting Minutes P & Z 5-13-2024

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-22-24



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 5-13-2024

ITEM:

Public Hearing/Discussion/Action: Special Use Permit 3500-3710 Multi Animal Permit– Annual Renewal

BACKGROUND:

Annual Renewal of previously approved permit.

SUPPORT INFORMATION:

Application
Public Hearing Notice
Parcel Map

Name of Drafter: Traci Alvarez	: Assistant City Manager	Meeting date 5-13-2024
E-mail: talvarez@torcnm.org	Phone: 575-894-6673	

*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*

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City of Truth or Consequences Planning & Zoning Commission will hold a Public Hearing during their regular scheduled meeting on Monday, May 13, 2024 to receive input regarding the following:

Public Hearing/Discussion/Action: Request for a Special Use Permit at 3500-3710 E. 3rd for the purpose of a Kennel Permit.

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 me at (575) 894-6675 or by email at aatorres@torcnm.org.

The agenda may be obtained on Friday, May 10, 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 April 4, 2024

CITY OF TRUTH OR CONSEQUENCES KENNEL PERMIT APPLICATION

Date: 3-1-2024
Applicant: Lane Forister
Property Address: 3710 E. 3rd
Phone Number: 361-537-2292 Business license number (if applicable): _____
Initial License _____ or Renewal X
**Email Address: laneforister@gmail.com

Purpose of Kennel Permit: House working dogs

Applicant Signature: [Signature]

ON SITE INSPECTION (A=Acceptable or U=Unacceptable)

- A Enclosure/fencing type/gates/latches/pens sufficient to prevent escape/proper confinement.
- A Adequate habitat space necessary for each animal's movement.
- A Animal(s) habitat is sanitary, good condition (weatherproofing), ventilated/heated, and accessible.
- A Animal(s) have access to protection from weather.
- A Sufficient fresh clean/sanitary potable water and food/sufficient access for each animal.
- A Property is clean/sanitary and free of hazards/trash/debris and not dangerous to animal(s).
- A Property size is adequate for the number of animal(s) allowing for compliance as noted above.
- _____ Property has the following conditions that require immediate attention: _____

Inspected by ACO: Knull Signature [Signature] Date 03/25/24

Code Enforcement Signature [Signature] Date 03/25/24

Planning and Zoning Commission Meeting Date: _____ () Approved () Disapproved

City Commission Meeting Date: _____ () Approved () Disapproved

R00338657 ck#1129 3/12/2024 [Signature]

CITY OF TRUTH OR CONSEQUENCES KENNEL PERMIT APPLICATION

Date: 3-1-2024
Applicant: Lane Forister
Property Address: 3710 E. 3rd
Phone Number: 361-537-2292 Business license number (if applicable): _____
Initial License _____ or Renewal ☒
**Email Address: laneforister@gmail.com

Purpose of Kennel Permit: House working dogs

Applicant Signature: [Signature]

ON SITE INSPECTION (A=Acceptable or U=Unacceptable)

- ____ Enclosure/fencing type/gates/latches/pens sufficient to prevent escape/proper confinement.
- ____ Adequate habitat space necessary for each animal's movement.
- ____ Animal(s) habitat is sanitary, good condition (weatherproofing), ventilated/heated, and accessible.
- ____ Animal(s) have access to protection from weather.
- ____ Sufficient fresh clean/sanitary potable water and food/sufficient access for each animal.
- ____ Property is clean/sanitary and free of hazards/trash/debris and not dangerous to animal(s).
- ____ Property size is adequate for the number of animal(s) allowing for compliance as noted above.
- ____ Property has the following conditions that require immediate attention: _____

Inspected by ACO: _____ Signature _____ Date _____

Code Enforcement Signature _____ Date _____

Planning and Zoning Commission Meeting Date: _____ () Approved () Disapproved

City Commission Meeting Date: _____ () Approved () Disapproved

R00338657 ck#1129 3/12/2024 lna



Sec. 3-8.1. Multi-animal site permit and kennel permit.

- (a) It shall be unlawful for a property owner, tenant, lessee, or authorized resident of said property, to possess or harbor more than four animals in any combination thereof, three months of age or older on their residential or business premises without a multi-animal site permit.
- (b) If a business premises is being used for the buying, selling, breeding, training, fostering, rescuing, or boarding of animals, said business shall apply for a kennel permit.
- (c) Animals belonging to visitors who are located within city limits and who stay in a household or lodging establishment longer than 30 days in a calendar year shall be included in the calculation of total animals for said location and the owner of the animal shall be required to comply with all applicable sections contained in this chapter.
- (d) No person shall keep or operate a residential or commercial multi-animal site without a permit issued by the city. All business applicants must have a valid business license issued through the city at the time of application.
- (e) Veterinary hospitals or clinics shall be exempt from the kennel permit licensure requirement of this chapter unless the veterinary hospital or clinic engages in the non-veterinary medical boarding of animals.
- (f) Any person who operates or proposes to operate a residential or commercial multi-animal site shall file an application for a permit with the police department, describing the location of the site, and the purpose for which it is to be maintained. An initial non-refundable fee, established by resolution, for residential or commercial multi-animal sites must accompany any application to defray the cost of processing the request.
- (g) Upon receipt of payment, the police department shall forward the application to the Planning and Zoning Department. All applications for multi-animal site and kennel permits shall undergo a special use permit process pursuant to the procedure detailed in section 11-5-6 of the City's Planning and Zoning Code.
- (h) An onsite visit of the premises shall occur by the animal control and designated zoning official or administrator prior to a hearing before the City's Planning and Zoning Board to verify compliance with this section and/or other applicable zoning regulations. If any provision of this section is in conflict with the provision of any applicable zoning regulation, the provision of the zoning regulation shall control.
- (i) All animals listed on the application three months of age or over must be vaccinated for rabies and possess a city animal license tag.
- (j) All multi-animal residential or commercial site permits and kennel permits must be renewed annually at a fee established by resolution.
- (k) There shall not be more than seven animals in any combination thereof for multi-animal residential or commercial site permits. The maximum animal occupancy for kennel permits shall be determined based upon the recommendation of the animal control officer or designated zoning official or administrator to ensure there is adequate space and adequate shelter to ensure sanitary and safe conditions.
- (l) An application may be denied if the applicant or animal owner shows a history of noncompliance with sections contained in this chapter as evidenced by two or more convictions of violations during the preceding 12 months. Any past city permit or license revocations may be considered in decision making process of whether to approve or deny a permit under this section.
- (m) Multi-animal site and kennel permit holders shall allow the animal control officer, police officer, designed zoning official or administrator or other city official to enter and inspect the premises for compliance with this section and/or any other city municipal code or ordinances during normal business hours.

-
- (n) A multi-animal site permit or kennel permit may be revoked when, in the opinion of the designated zoning official or administrator or animal control officer, any one or more the following conditions exist:
- (1) The premises or enclosures are not maintained in a clean, safe, and sanitary condition and are a health, fire, or public safety hazard or produce noxious odors.
 - (2) The number of animals exceeds the number allowed under the permit.
 - (3) Any other violation listed under this chapter or sections.
- (o) In cases where a multi-animal site permit or kennel permit is revoked, the permittee shall be notified in writing via the mailing address listed on their permit application. The revocation letter shall state the reasons said permit has been revoked and the option to file a written appeal with the City Manager or their designee within ten business days of the date listed on the revocation letter. Written appeals shall be hand delivered to City Clerk's Office within the allotted timeframe. The City Manager or their designee may review the appeal and reverse the decision, modify the decision, or deny the appeal and upheld the initial revocation.
- (p) If a multi-animal site permit or kennel permit has been revoked, said applicant and/or location of where the permit was issued shall not be allowed to apply or obtain another permit within city limits for a period of at least two years from the date of revocation.

(Ord. No. 725 , 2-9-22)

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES**

MONDAY, MAY 13, 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, May 13, 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
Angela A. Torres, City Clerk
Katy Martinez, City Clerk Admin Assistant

1. APPROVAL OF AGENDA:

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

2. APPROVAL OF MINUTES:

a) April 8, 2024.

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

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

There were no comments from the public.

City Clerk Torres swore in the participants for the public hearings.

4. PUBLIC HEARINGS (5 Minute Rule Applies)

- a) Public Hearing/Discussion/Action: Variance request at 2090 S. Broadway for the placement of Metal Buildings as per Chapter 16 - COMPREHENSIVE PLANNING AND ZONING CODE ARTICLE XIV. - DEVELOPMENT STANDARDS Sec. 11-14-12. - Metal Buildings.**

Assistant City Manager Alvarez: Chairmen, member of the board property is in the C-1 district applicant is requesting a variance from the code for the section that states all metal buildings should have a façade or veneer consisting of the non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic, or other similar approved material on all sides of the structure that face a public street. The applicant is requesting no façade or veneer in your agenda packet you have the attached letter from the applicant as well as your site plan the parcel map your code references as well as the findings and fact check list and applicant is in attendance. Mr. Gary Whitehead.

Chairman Sisney opened the public hearing.

Proponents:

Gary Whitehead, Applicant: Thank you members of the committee, it's good to be here in front of you today. We are constructing and requested a permit approval for a new storage facility on this particular property were installing 22 standard storage units like you would see anywhere. They are metal construction they come in a kit. They are prefab. We have those at 510 s Broadway that's our first project that we have. When we started the construction project, we had intended to put the buildings to where the doors faced the outside. Where they would face Broadway but based on setbacks and the design, we needed to use we needed to face off Mercury was the best way to access. Once we got that understanding we broke the building apart into two sections so we could create a safer environment in the middle of our storage units so we don't have to put a fence you will be able to drive straight. We have a metal electric gate for our customers. Effectively we didn't envision that we would be required to do a façade on the outside of the storage. What I would point out in the area the other thing to kind of tie into the neighborhood Tony if you know him from Tony's Café. He's already put up a white six-foot fence around his entire property so we ordered our buildings in white and grey so they would at least match the neighborhood. We did that before we had even understood we would have to do a façade. So, at the end of the day, we could say that the building across the street is a metal building without a façade. I don't think Tony has any objections and so we would ask for a variance of the need to put the façade on the building. It's not going to create any safe

and not going to create any hazard and it's probably an eight-thousand-dollar expense with we could use somewhere else on the project. So, I'll stand for questions.

Member Kent: So, these are going to be white metal buildings you said?

Gary Whitehead, Applicant: That's correct.

Member Kent: So, driving down Broadway you would just see the back side?

Gary Whitehead, Applicant: You would see the back side a white metal with grey trim. And then landscaped you've driven by the project we had to bring in considerable fill, so we are going to landscape that, so we don't have any runoff or any issues with that and then get black metal fencing on the Mercury side for gates and drive through.

Vice Chairman Buhler: Will you have lighting?

Gary Whitehead, Applicant: Yes. The inside of the facility will be lite. We won't have any exterior lighting but again the inside.

Member Kent: When you say inside between the buildings?

Gary Whitehead, Applicant: Between the buildings are twenty-one feet between the inside the buildings in that space where you would drive in and access your storage units. So, we will light that facility so again customers will feel safe and invited to come in at night. And provide some security.

Member Kent: When you say you will do landscaping on the Broadway side because you said you had to bring in a lot of fill dirt and stuff and like landscaping are you going to plant anything.

Gary Whitehead, Applicant: No there will be no plan it will be native. It's a pretty good slope so the contractor we are working with suggested that we use the bigger rock that will hold it all and prevent run offs. So, it will be landscaped kind of that way.

Vice Chairman Buhler: What kind of fencing are you putting on it?

Gary Whitehead, Applicant: So, on the front on the Mercury side and on the side up against Tony's it will have a welded six-foot open slat fence so you can't crawl over and then with an electric gate.

Member Luchini: And on Broadway side?

Gary Whitehead, Applicant: Well, there will be no gate on Broadway you won't be able to get in or see in from Broadway.

Assistant City Manager Alvarez: His building plans have been submitted to the city and they've gone through the engineering because it was an undeveloped site. It was sent all the way up to our engineer that over sees, and they've done the full review on all of his plans submittal including the drainage including the landscaping and everything and it's all approved per our municipal code.

Member Kent: Except the façade?

Gary: we even have approval for the façade I submitted a plan to do a four-foot wings coat typical on a metal building, and I know that was approved so all we are asking is that we don't have to put that wings coat on it because it would be consistent with our other projects.

Vice Chairman Buhler: I make a motion that we approve. I recommend you not to have a façade and the extra expense. For this I make a motion.

Chairman Sisney: Nothing personal Mr. Whitehead just trying to take care of business. There is no hardship involved here, it's just you're asking not to do what has been put into the code. I'm here to protect it's my job to protect the laws of the City of Truth or Consequences and I'm just curious you're asking without a hardship, and this will set a precedent. So now with a precedent our hands are tied at that point.

Gary Whitehead, Applicant: well, I would say to you that the precedent is already set sir. Metal buildings have been constructed in the city for more than 25 years and it's become a very known product. They are spread out the city in lots of places and I think in geographical locations where you find that they are already in, and they are not going to affect the neighborhood they are not going to affect the aesthetics. I think you have the ability to say we could get by with that. Now I'll give you a good example which I think you did right. The family dollar on top of the hill. It's in a beautiful location, it's in a fantastic spot, it overlooks the city of Truth or Consequences that potentially would not have been as quality of a product if it would have just been a metal building standing out there for the world to see. So, I think you have the ability to protect both, and the precedent is already set so not to be argumentative with all due respect but. And I constructed 25 units in 2018 and we were not required to put that façade. So again, I don't know if that was the code in 2017.

Chairman Sisney: So, let me ask a question of Mrs. Alvarez. When did this code come into effect?

Assistant City Manager Alvarez: I didn't look and see. Let me see you guys have the section of the code.

Chairman Sisney: Because I just want to establish weather this will be a precedent or not. If there wasn't a law, then there wasn't a precedent until it became a law.

Assistant City Manager: So, the city clerk might have it. She has the ability to look it up in the code. I don't have that noted in my stuff.

Chairman Sisney: Well, their looking at that let me ask another question. I'm sorry to interrupt.

Assistant City Manager: It might have been in there for some time.

Member Luchini: I will make a comment. That happened to us with H&O Tire and Feed. We did have to put a wood façade on the building that faced Date. We didn't ask for a variance we went ahead and put it.

Chairman Sisney: I was a little confused when you said there was no fence going to be on Broadway. So, the building is going to establish a wall itself.

Gary Whitehead, Applicant: That's correct.

Chairman Sisney: and the fences will be up to the buildings.

Gary Whitehead, Applicant: The fences will be on the mercury side. Going north and south. So again, on mercury that's where the fences will be but on Broadway it will be just the solid building.

Member Luchini: What about on the east side towards Tony's?

Gary Whitehead, Applicant: Tony already has a six-foot wall and it's not required by the code if we were to do that. It only requires the sides that face a public street.

Member Luchini: But your gate? Your security gate?

Gary Whitehead, Applicant: There will be a security gate on that side as well. Cause we would want the whole interior of the storage to be secure.

Chairman Sisney: So, in reality the only part of the building that would require any façade would be Broadway and this much of the corner of that building that going down mercury cause then it becomes a fence?

Gary Whitehead, Applicant: If we were getting technical, I would say yes but if the deserve the committee and the commission is for me to put a façade, I would probably have to go down all of mercury just so it would aesthetically look correct right.

Chairman Sisney: But you wouldn't have to do the back side then?

Gary Whitehead, Applicant: I wouldn't have to do the alley it isn't required on the alley side.

Chairman Sisney: ok

City Clerk Torres: On the code it's not really showing me when it was generated but it looks like it's been here for a while. I don't recall us making any amendments to this portion of the code within the last five or more years. It's kind of an older.

Member Luchini: we are having a workshop aren't we regarding this kind of topic today? No those were the storage containers.

City Clerk Torres: so yeah, the storage containers they are going to do a workshop and they are going to change that. I'm not sure when they are. That won't be the same one that I called you guys on for this morning.

Chairman Sisney: I have another question for you Mr. Whitehead if don't mind. You said these are kits are they roll offs?

Gary Whitehead, Applicant: No, this is a designed mini storage product that we purchased.

Chairman Sisney: So, you pour a slab?

Gary Whitehead, Applicant: It's got a concrete slab.

Chairman Sisney: So, these things are staying.

Gary: these are permanent structures. They are designed engineered all stamped. They are consistent with any mini storage that you would see in any town and place you would drive you would see they are consistent with that product. Roll up doors you know permanent.

Chairman Sisney: thank you. I have satisfied my questions if anyone wants to ask a question or continue, I'm done.

City Clerk Torres: So, I know we don't have anyone else who signed up but just to go through protocol before we move forward with the motion we will go ahead and ask if anybody else wants to speak if they don't then we can close the public hearing and then you guys can do the motion and then we will do that process for each one of the public hearings.

Member Luchini: what was the façade that you had designed so far?

Gary Whitehead, Applicant: We found a product called a wings coat. It's three and a half foot I think 42 inches and it's just fake bricks they are Styrofoam looks like there is plenty of products on the market that you could buy, and it attaches to the building it would look ok. It's just a lot of money. But you know again if that the way you want to perceive it's understandable, I have no problem with it either.

Vice Chairman Buhler: I would like to say one thing. People are building homes now out of metal buildings, and they have their home in it, and they have their shop in it. They have numerous things in them and personally I don't have a problem with it at all. cause you know it's a profiled metal to correct kind of?

Gary Whitehead, Applicant: Yeah, I think that's what it's called. Again, chairman and vice chair I don't think I would be asking, and I think I would accept it being harder if I was in the middle of downtown T or C. I'm effectively saying I'm in an area that already has used metal buildings there is not a lot of construction. The neighbor next to me has the same exact product in a six-foot wall. This building will look no different. So that's why I'm asking for the variance. My façade is not going to make that neighborhood look any better or worse than what it already does. If I do the building right it will be a nice product it will be clean it will look good it will be a nice improvement and little bit of economic development you know all the buzz works but you know I think I'm not asking for something that's outside the scope other than in that particular neighborhood \$5000 in fake brick are going to make us any better or worse. Where if I was building next to Bank of the Southwest downtown. The Bank of the Southwest might say gosh we have a problem with that we spent lots of money you know what I'm saying. So, I feel like that's the only request and again I appreciate the opportunity to speak and understand whichever way we have to go.

Chairman Sisney: Thank you Mr. Whitehead.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Vice Chairman Buhler made a motion to recommend approval to the City Commission for a Variance request at 2090 S. Broadway for the placement of Metal Buildings. Member Kent seconded the motion. Roll call vote was taken.

Chris Sisney, Chairman voted nay.

Susan Buhler, Vice Chairman voted aye.

Esther Luchini, Member voted nay.

Lisa Kent, Member voted aye.

Motion tied with a 2-2 vote.

City Clerk Torres: That was a tied vote. Does anyone else want to make another motion or do you want to just take that motion to the commission.

Vice Chairman Buhler: Well, they are the are the ultimate deciders anyways.

Member Luchini: We are just approving these variances as they come up and the ordinance that are in the book and null and void if we keep approving these variances.

Gary Whitehead, Applicant: I understand and accept it.

Member Luchini: I do believe that you have a quality product that will look nice and the neighbors.

Gary Whitehead, Applicant: Unfortunately, it's one of those it happens to the developer that doesn't read all the codes so its ignorance right when you get your final approval, and you go oh great it's all approved and you read through everything and then it's saying and you have to put a façade. You know I don't know how we fix that but it's ok.

City Clerk Torres: So, if I could just make a comment, so I think the reason why add a variance request to the code is because there are certain circumstances to where like the property is trashy and it wouldn't look good or something like that then of course those would be reasons for you guys to deny it. But sometimes stuff like this could be a benefit or you know what I mean or if there is no opponent. I'm not trying to sway your vote I'm just trying to explain why they do have variances and I know it seems like we are going against the code but that was the reason behind them actually adding a variance so you could do it by a case-by-case basis and kind of make a decision on if you wanted to approve it or not.

Assistant City Manager Alvarez: If I could expand on that. That's why what is included in your packet that every public hearing for planning and zoning commission hears is supposed to be based on the seven findings of facts. That's to help you make a decision for or against.

Member Kent: I mean personally given industrial ness of that area. I mean there is an auto mechanic across the street with fifty cars parked all over the place you can't even drive by half the time. I would rather see a nice new metal building than fake brick. So, I'm not going to push to say you have to put fake brick up. But I get its case by case and everybody has their thoughts.

City Clerk Torres: We could move on to the next one.

Chairman Sisney: You know it goes to city council.

Member Luchini: Well, you know everybody starts with good intentions when they build something. You know I'm sure Hastys across the street didn't intend to have fifty cars outside his business by now, you know twenty or thirty years later. And whether a façade was required at the time he put his building in we don't know. I would say no it was not that was that long ago. I know we could trust you to have a good product, a clean product, a healthy product, service. So, then it snowballs. One bad apple is going to ruin it for everybody else.

b) Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Shipping Containers as per Section 11-10-4 A (3).

Assistant City Manager Alvarez: The next two items are applicable to this property, so I'm going to present them together even though you guys have to vote on each variance separately. They are kind of tied into one in the same. The first variance request is for the placement of shipping containers per our municipal code shipping containers are allowed in the commercial district, but they must be subordinate to a main use or structure. The applicant is requesting to use shipping containers for the purpose of storage units so there is no main structure on that property and then similar to the variance request that we just heard they are also requesting a variance for no façade or veneer in the commercial district. You guys have your sight plan in there as well as pictures of what the storage units look like or the shipping containers that are designed to be storage units and all of you supporting documents sight plans, parcel map where these would be located and then as City Clerk Torres let us know there was the email that came through that has some questions as well. Applicants are in attendance to answer and questions.

Chairman Sisney opened the public hearing.

Proponents:

Laurie Chavez, Applicant: I have 500 N Date St. I'm not really a good speaker but I'm here for whatever it is that you need to ask of me. The shipping containers that we want to place on the property are brand new. They are 10x40 units so there would be four units on each side and the proposal is to set up to units back-to-back to start. Then possibly put two to four more on the property. They are brand new they are a cream color so they will mix in fine. We sit down off of Date St.

Vice Chairman Buhler: Is there any flood problem with that property that you know of?

Laurie Chavez, Applicant: Not that I know of.

Assistant City Manager Alvarez: This still has to go through planning and zoning portion. It came to variance first before we went through the whole process of submitting.

Vice Chairman Buhler: Do you plan to have lighting?

Laurie Chavez, Applicant: Yes, on each unit. Each unit has a roll up door and there is going to be a solar motion light in front of each unit.

Vice Chairman Buhler: Can you drive up to your unit? How would you get to your unit?

Laurie Chavez, Applicant: Yes, you will be able to drive up to them.

Vice Chairman Buhler: All of them?

Laurie Chavez, Applicant: Yes.

Vice Chairman Buhler: Ok, that's good.

Member Kent: There will be no security gates on the property?

Laurie Chavez, Applicant: No security gates.

Vice Chairman Buhler: No fence?

Laurie Chavez, Applicant: No fence unless we are told to put one up, we can do that. But they are secure units, they are extremely thick. Dividing units between each are not going to be wood they are going to be actual metal. So, nobody could get into each other's units.

Vice Chairman Buhler: You know they make a box to where you can have the lock in the box where somebody can't get a pair of bolt cutters. You might check into that.

Laurie Chavez, Applicant: Its up to each individual person that rents the unit to put their own lock on there.

Vice Chairman Buhler: Right.

Member Kent: Would you do any landscaping along Date St?

Laurie Chavez, Applicant: We are sitting down below Date St. You're only going to see the tops of the units themselves.

Member Kent: How far down are you? I can't tell on the map.

Laurie Chavez, Applicant: Its where the only Circle C Motel use to be. Right across from the catholic church.

Member Kent: That's probably before my time.

Laurie Chavez, Applicant: The Hot Springs Cannabis is right next door. They have a conic outside.

Chairman Sisney: You stated that they are 10x40 are they 16x40?

Laurie Chavez, Applicant: No, they are 10x40.

Chairman Sisney: The drawling shows each unit being 8x10.

Laurie Chavez, Applicant: Maybe I miss quoted. Maybe they are 8x10.

Chairman Sisney: So, its 16x10? It would be 16 wide, so you get two 8 footers.

Laurie Chavez, Applicant: No, there are four doors on each unit. It's forty-foot conics. So, it could be an 8x40. But I believe it's a 10x40 I could be wrong.

Member Kent: I think they are usually a 10x40. Witch means these numbers are all off. Cause then it would be 5x10 for each unit.

Member Luchini: So, the conics would be cut?

Laurie Chavez, Applicant: No, it's one shipping container.

Member Luchini: Ok so not cut but sectioned.

Laurie Chavez, Applicant: Its one shipping container brand new with roll up doors. So, there are four roll up doors.

Member Kent: They are roll up doors or they are shipping container doors? I mean shipping container doors have a big heavy hinge you pull two doors out. Ok so it's not shipping container doors.

Vice Chairman Buhler: You're going to add roll up doors to these containers?

Laurie Chavez, Applicant: No.

Member Kent: You're buying them this way?

Laurie Chavez, Applicant: Yes.

Chairman Sisney: What's this picture of?

Vice Chairman Buhler: That shipping container that's a normal door.

Laurie Chavez, Applicant: That's the end.

Member Kent: Those are the ends of your units?

Laurie Chavez, Applicant: Yes, each end has a door that opens.

Member Kent: There are no doors on the side in these pictures.

Laurie Chavez, Applicant: I apologize they are not roll up.

Member Kent: They are sealed, whether out shipping container doors?

Laurie Chavez, Applicant: yes.

Member Luchini: One unit.

Member Kent: Well, they came that way you can see.

Laurie Chavez, Applicant: They are going to be butted up behind each other.

Member Buhler: Are you going to be able to enter it through 5th St?

Laurie Chavez, Applicant: You can enter it through 5th St, or you can enter in through the alley.

Chairman Sisney: Do you know what the elevation is relative to Broadway to the bottom of your lot? I know it's down there. Do you know how tall these containers are?

Laurie Chavez, Applicant: No.

Chairman Sisney: There is railing there now. What's going to happen with that? To keep people from? Are you going to fence that off or anything?

Laurie Chavez, Applicant: No.

Member Luchini: You are putting them in phases?

Laurie Chavez, Applicant: Yes, we were told to just show one phase at first. I didn't know how we were going to do it and then we could substantially add a few more.

Chairman Sisney: Are you going to have a dumpster?

Laurie Chavez, Applicant: Probably yes.

Chairman Sisney: Where is it going to go?

Laurie Chavez, Applicant: I don't know yet.

Chairman Sisney: It doesn't look like there is much room left.

Laurie Chavez, Applicant: That just something that's in the planning right now.

Chairman Sisney: Do you know how tall these units are?

Laurie Chavez, Applicant: No, I don't you asked me that already I don't know how tall they are. They might be 12 feet tall, I'm not sure 10 feet tall.

Member Kent: They are probably about 10 feet. We could even look at a standard shipping container.

Laurie Chavez, Applicant: I apologize I didn't know I was getting up here to speak or I would have better answers for you.

Vice Chairman Buhler: Is it just going to be gravel, dirt? You are just setting them on dirt?

Laurie Chavez, Applicant: Yes Ma'am.

Member Kent: 40 feet long 8 feet wide and 8.6 feet tall. So, they are only 8 feet wide.

Laurie: These are actually taller. These are taller than the normal standards. I think they are either a 9 or a 10 foot.

Member Kent: You don't know how wide?

Chairman Sisney: Right here 9 foot 6 inches says on the door.

Vice Chairman Buhler: Assistant City Manager Alvarez, for commercial do these meet all the qualifications for commercial? I know you approved them for people to use them for storage at their home. Are there rules for commercial?

Assistant City Manager Alvarez: In commercial containers may not exceed 46 feet in length and 10 feet in height. They have to be 10 feet from a main structure, but they don't have a main structure there. That's why they are requesting the variance. Also, no less than 5 feet from the property line on the side and rear yards. That's in your section that I included in your packet.

Vice Chairman Buhler: Well, I hope the city will require you to have a fence. Because we have storage units that don't have a fence and people try to break into them.

Laurie Chavez, Applicant: I'll put a fence up if they are wanting a fence put up.

Vice Chairman Buhler: Well, the city would be.

Assistant City Manager Alvarez: That's not a requirement of the municipal code right now.

Laurie Chavez, Applicant: I mean these units are very solid.

Vice Chairman Buhler: I know I have one and its nice that your using new ones.

Laurie Chavez, Applicant: We have a construction company, and we built a shop out of these units and then put a roof over the top if it.

Member Kent: If you don't have a security gate, will you have security cameras?

Laurie Chavez, Applicant: Yes, we will probably put some cameras up.

Member Kent: Also signing indicating as such? So, people aren't enticed to come on the property when they shouldn't be.

Vice Chairman Buhler: The person that sent the letter in that was one of the questions. She wanted to know if the property would be fenced, that was a concern.

Member Kent: Will it interfere with the views?

Laurie Chavez, Applicant: It will not interfere with and views.

Vice Chairman Buhler: Also, they are also worried their property taxes and they are worried about crime. About it bringing crime.

Laurie Chavez, Applicant: There is a lot of crime in this town and that won't bring any extra crime. It will bring security to people to put their stuff in storage.

Vice Chairman Buhler: They also wanted to know if there would be and dirt work with leveling.

Laurie Chavez, Applicant: It would definitely be leveled we a dirt contracture.

Vice Chairman Buhler: Ok, good.

Chairman Sisney: The way I read that question was, where that going to bring it up to the level of Date St? Which would be like 12 feet, I don't think that's happening that would require all kinds.

Assistant City Manager Alvarez: Just make sure as you guys are asking and get answers to your question. You remember the variance is being requested for allowing shipping containers to be put there without a main structure in there. As well as the second step you will go through will be the variance request for the façade. That is what the public hearing is about.

Chairman Sisney: I don't like hypothetical questions, but I am going to throw one out here. How do you feel about graffiti?

Laurie Chavez, Applicant: I don't like graffiti and if they graffiti it ill spray it and make it match the same color that it was.

Chairman Sisney: Thank you.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Member Kent: I will make a motion to deny the request primarily and the fact that there will be no security fencing gates whatever you want to call it around the property.

Vice Chairman Buhler: We are only here over the façade.

Assistant City Manager Alvarez: The first one is for placement of shipping containers without a main structure. The second action you guys will take will be the façade.

Member Kent: Is fence façade? Are security gates considered façade?

Assistant City Manager Alvarez: No.

Vice Chairman Buhler: It's the bottom of the building. It's the thing with Gary.

Assistant City Manager Alvarez: there is nothing that requires a fence on that property.

City Clerk Torres: The first action will be on shipping containers. The second action will be for the placement.

Member Luchini: Why does it need a primary building on the premises?

Assistant City Manager Alvarez: That's the way it was written within the municipal code. I think not necessarily the thought process moving forward of the potential of storage units but so that somebody doesn't put a whole bunch of shipping containers on their property to store all of their stuff and not as an actual business of storage allowing people to rent a storage unit.

Vice Chairman Buhler: You guys are going to adopt some rules also about the storage containers is that correct?

Assistant City Manager Alvarez: This is a recent ordinance I haven't heard anything being any direction from the commission on the potential revision of this one. As the planning and zoning commission, if there is changes you want to make on anything you can put those one the agenda and have that discussion to recommend those changes, then they go through the process through the commission.

Vice chairman Buhler: She is doing new containers that's a good thing. But if someone where to put up a container with writing all over it in my neighborhood I wouldn't like that.

Assistant City Manager Alvarez: There is a different process for residential versus commercial. Everybody that does the residential has to come to you guys and then you can make those specifications during that approval process.

Vice Chairman Buhler: That's good to know.

Assistant City Manager Alvarez: The first motion would be to approve or deny the variance request for the shipping containers without a main structure.

Member Luchini made a motion to recommend approval to the City Commission for a Variance request at Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Shipping Containers as per Section 11-10-4 A (3). - Vice Chairman Buhler seconded the motion. Roll call vote was taken.

Chris Sisney, Chairman voted aye.

Susan Buhler, Vice Chairman voted aye.

Esther Luchini, Member voted aye.

Lisa Kent, Member voted nay.

Motion carried with a 3-1 vote.

- c) Public Hearing/Discussion/Action: Variance request at 500 N. Date Street for the placement of Metal Buildings as per Chapter 16 - COMPREHENSIVE PLANNING AND ZONING CODE ARTICLE XIV, - DEVELOPMENT STANDARDS Sec. 11-14-12. - Metal Buildings.**

Chairman Sisney opened the public hearing.

Chairman Sisney: Its almost impossible on these to veneer them because of the way the doors are.

Vice Chairman Buhler: It would be very hard. Also, the way it is on the outside.

Laurie Chavez, Applicant: I could tell you that as a business owner in Sierra County my husband is from Sierra County been here his whole life. We will maintain that property.

City Clerk Torres: The motion would be to recommend approval or denial of the variance request. As presented if you don't agree with what they are presenting then you would vote against.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Vice Chairman Buhler made a motion to recommend approval to the City Commission for a Variance request at 500 N. Date Street for the placement of Metal Buildings. Member Kent seconded the motion. Roll call vote was taken.

Chris Sisney, Chairman voted Aye.
Susan Buhler, Vice Chairman voted Aye.
Esther Luchini, Member voted Nay.
Lisa Kent, Member voted Aye.

Motion carries with a 3-1 vote.

d) Public Hearing/Discussion/Action: Special Use Permit 3500-3710 E. 3rd Multi Animal Permit– Annual Renewal.

Assistant City Manager Alvarez: My agenda action form didn't say East Third, but the public hearing notice did. This is just an annual renewal of a multi animal permit for kennel permit. Applicant submitted all applicable documents. Our code enforcement officer who is acting as animal control officer went out and did the inspection and saw no concerns. He has approved both on the code enforcement side as well as the animal control side. Applicants are present if you have any questions.

Chairman Sisney opened the public hearing.

Proponents:

Amanda Forrister, applicant: I'm here on behalf of my husband for the kennel multi animal use permit for our property. It's just an annual renewal previously approved permit.

Opponents:

There were no opponents.

Chairman Sisney closed the public hearing.

Chairman Sisney made a motion to recommend approval to the City Commission for a Special Use Permit at 3500-3710 E. 3rd Multi Animal Permit– Annual Renewal. Vice Chairman Buhler seconded the motion. Roll call vote was taken. Motion carried unanimously.

5. REPORTS FROM THE BOARD:

There were no reports from the board.

6. REPORTS FROM STAFF:

Assistant City Manager Alvarez: Reported on Tin St mobile homes she is waiting on city attorney. Will have it on the next agenda.

City Clerk Torres: As I emailed and spoke with you guys this morning, we will have a workshop next Wednesday at 9am to go over combining the boards. You guys will be able to give you input on that.

Vice Chairman Buhler: I won't be here. If there is any kind of vote I give my proxy to Chris.

Assistant City Manager Alvarez: There is no vote at this time. It's just a workshop. They will be reviewing submission of the commission they requested for us to combine those. They are actually cleaning up all the ordinances it pertains to advisory boards. We have some advisory boards listed in there that haven't been active in a lot of years. So, it's the entire advisory board ordinance I think Angela is going to send you all a copy. The workshop is to review, they might make some recommendations on stuff that's in there. Once we go through that workshop process it will have to go back to the commission for approval to publish. Then it will go back to the commission again for final adoption and public hearing. There is lots of time for input if you're not going to be here. I would say take the time to review and if you have recommendations, suggestions or questions send them to Angela in an email. She will make sure that everybody that is in attendance for our commission as well as any of the boards all have a copy.

Vice Chairman Buhler: It would be nice to have a report of what was talked about after the meeting.

City Clerk Torres: There will be minutes. It's also attached in the email I sent this morning.

Vice Chairman Buhler: We hope that we get to stay our own board. It would be nice to have one more member for the planning and zoning. That would be my contribution. Then we would get to finish our terms and maybe if someone wanted to do it again they could reup. It would be nice to have one more member.

Assistant City Manager Alvarez: Some of our other existing boards have virtually no member, so I know one of the things we talked about is that within that ordinance it does talk about if they can't form a seven-member board. We are looking at what existing board members we have for some of these boards and how we could potentially combine you guys. I don't think there is any

thought process where everyone is off the boards, and you have to reapply to be on this one board. There is not very many out there and what we have existing between all of those boards potentially makes a seven-member board then if the commission wants to that route it might be additional duties.

Vice chairman Buhler: I know our board is different then all the other boards. People have to take an oath.

Assistant City Manager Alvarez: They do at the other boards. We do public hearings on the other boards.

Vice Chairman Buhler: Do you?

Assistant City Manager Alvarez: Yes, we have public hearings done.

Vice chairman Buhler: Well, I hope we get to stay.

Assistant City Manager Alvarez: Get all of those in an email and send it over to City Clerk Torres.

7. ADJOURNMENT:

Chairman Sisney adjourned the meeting at 4:53 p.m.

PASSED AND APPROVED ON THIS 10th DAY OF JUNE, 2024.

Chris Sisney, Chairman
Planning & Zoning Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.8

SUBJECT: Discussion/Action – Notice of Award of Engineering Agreement for the City of Truth or Consequences CDBG Project No. 22-C-NR-I-01-G-01 and Contract Approval

DEPARTMENT: Community Development

DATE SUBMITTED: May 17, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Two proposals for RFP 23-24-002 were received by the RFP deadline of December 20, 2023 at 2 pm. The firms submitting proposals by the deadline were Molzen Corbin and Wilson & Company. Proposals were opened shortly after 2 pm and reviewed for completeness. Both proposals met requirements and were deemed responsive. Proposals were reviewed and Wilson & Co. was deemed the best apparent solution to the project for which the procurement was issued. All information has been submitted, reviewed and approved by the funder CDBG.

Recommendation:

Execute Notice of Award with Wilson and Co. and enter into Contract

Attachments:

- RFP
- Notice of Award
- Contract Agreement

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

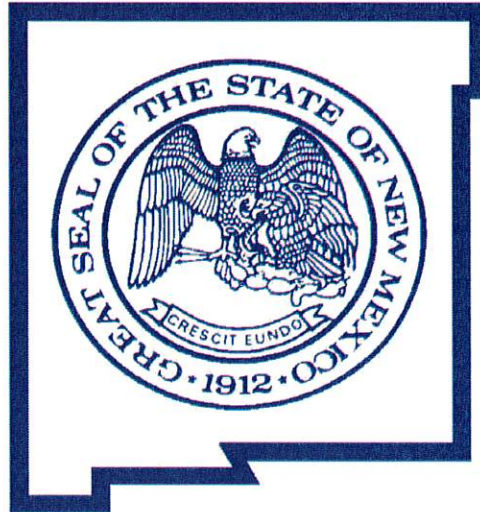
☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-22-24

Exhibit 3-C
REQUEST FOR PROPOSALS
FOR
DESIGN PROFESSIONAL SERVICES

RFP No. 23-24-002

Packet No. _____



Project Name	Water Meter Replacement
Contracting Agency	City of Truth or Consequences
Address	505 Sims Street
	Truth or Consequences, NM 87901
Telephone	(575) 894-6673
Date	11/24/2023
Procurement Manager	Mindee Holguin

This form was prepared by the Local Government Division, Department of Finance and Administration, and is endorsed by the Professional Technical Advisory Board [composed of the Consulting Engineers Council of New Mexico, New Mexico Society of Professional Engineers, the American Institute of Architects of New Mexico, the New Mexico Society of Surveyors and Mappers, and the New Mexico Society of Landscape Architects].

NOTICE OF REQUEST FOR PROPOSALS

Qualifications-based competitive sealed proposals for design professional services will be received by the Contracting Agency, the City of Truth or Consequences
for RFP No. 23-24-002.

The Contracting Agency is requesting proposals for professional

- | | |
|---|--|
| ☐ architectural services ¹ | ☒ engineering services ¹ |
| ☒ surveying services ² | ☐ landscape architectural services ² |
| ☐ planning services | |

For: (insert Project Name and Location):

Water Meter Replacement in Truth or Consequences and Williamsburg

Project No. 22-C-NR-I-01-G-01. Proposals will be received at 505 Sims Street, Truth or Consequences, NM 87901 or can be submitted by email to procurement@torcnm.org (please limit file size to 5 MB) until December 20, 2023 at 2:00 p.m.

Copies of the Request for Proposals can be obtained in person at the office of: Chief Procurement Officer at 505 Sims Street, T or C, NM 87901, will be emailed upon request to procurement@torcnm.org,

or will be mailed upon written or telephone request to Mindee Holguin at (575) 894-6673

A Pre-Proposal Conference ☐ will ☒ will not be held on _____

20 ____ at _____ Time _____ <a.m. or p.m.>

PURCHASING AGENT:

Mindee Holguin

Date: Nov 24, 2023

[For Contracting Agency Use Only]

Newspaper:	<u>Albuquerque Publishing Co.</u>	Publish:	<u>11//24-11/26, 12/1-12/3</u>	P.O. No.	<u>#79179</u>
Newspaper:	<u>Las Cruces Sun News</u>	Publish:	<u>11//24-11/26, 12/1-12/3</u>	P.O. No.	<u>#79180</u>
Newspaper:	<u>Sierra County Sentinel</u>	Publish:	<u>11//24-11/26, 12/1-12/3</u>	P.O. No.	<u>#79181</u>

[Note: This Notice is issued pursuant to the requirements of §13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals (§13-1-113 NMSA 1978) and published in a newspaper of general circulation in the area.]

¹ RFP required if over \$50,000 in basic design fees excluding taxes or as prescribed by local regulation.

² RFP required if over \$10,000 in basic design fees excluding taxes or as prescribed by local regulation.

1. PROJECT DESCRIPTION (as defined by Exhibit "1-A")

The City of Truth or Consequences' CDBG Water Meter Replacement project will consist of the design and construction related to the replacement of aged and deteriorated water meter assemblies. The current manual read water meters will be replaced with new advanced metering infrastructure radio read meters. The meter replacements will take place throughout the municipal water system service area which includes the City of TorC and Village of Williamsburg. The condition and location of the meter assemblies varies widely throughout the service area and therefore the location of the assemblies and surface improvements to be replaced will vary as well. In locations where the existing meter assemblies have failed and are located within the sidewalks, the improvements will also include the replacement of the meter setters, meter cans, lids, plus the removal and replacement of the sidewalk section as needed to complete the installation.

The full scope of the project will include the replacement of approximately 981 meters, 98 meter assemblies and 88 square yards of sidewalk removal & replacements. The general scope of work is the same for the full and phased projects, with the only difference for the phased approach being a reduction in quantity. The state of the inflated construction costs will be the deciding factor for the overall completion of the intended project. The best-case scenario will involve reasonable bids for the completion of the work that will allow the City to replace all 981 water meters and accompanying appurtenances. The worst-case scenario will involve inflated bids, reducing the number of meters that can be replaced and therefore require a ranking and/or prioritization of replacing those meters that are in the worst condition first.

2. SCOPE OF WORK

The Offeror shall perform the following professional services:

2.1 Provide standard **Basic Design Services**, consisting of:

Architects/Landscape Architects

- ☐ Programming Phase
- ☐ Schematic Phase
- ☐ Design Development Phase
- ☐ Construction Documents Phase
- ☐ Bidding and Negotiations Phase
- ☐ Construction Administration Phase
- ☐ Post-Construction Phase

Surveyors

- ☒ Property Boundary Survey
- ☒ Topographic Survey
- ☒ Easement Survey
- ☒ Right-of-Way Survey
- ☒ Inspection Report

Additional Services

- ☒ Environmental Documentation
- ☒ Permitting
- ☒ Grant Administration
- ☒ Right-of-Way Acquisition

Engineers

- ☒ Study and Report Phase
- ☒ Preliminary Design Phase
- ☒ Final Design Phase
- ☒ Bidding and Negotiations Phase
- ☒ Construction Phase
- ☒ Operational Phase

Planning Studies

- ☐ Comprehensive Plan
- ☐ Strategic (i.e. issue specific) Plan
- ☐ Mapping and/or Zoning
- ☐ Other Planning Tasks

2.2 ☒ **Periodic** or ☒ **Full-time** on-site observation during construction.

2.3 Other (list):

INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS

1.1 **Addendum:** a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: Addenda.

1.2 **Consultant:** means the Successful Offeror awarded the Agreement/Contract.

1.3 **Determination:** means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§13-1-52 NMSA 1978).

1.4 **Offeror:** means any person, corporation, or partnership legally licensed to provide design professional services in this state, who chooses to submit a proposal in response to this Request for Proposals.

1.5 **Procurement Manager:** means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.

1.6 **Request for Proposals:** or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals (§13-1-81 NMSA 1978).

1.7 **Responsible Offeror or Proposer:** means an offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§13-1-83 NMSA 1978).

1.8 **Responsive Offer or Proposal:** means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements (§13-1-85 NMSA 1978).

1.9 The terms **must, shall, will, is required, or are required**, identify a mandatory item or factor. Failure to comply with a mandatory item or factor

will result in the rejection of the offeror's proposal.

1.10 The terms **can, may, should, preferably, or prefers** identify a desirable or discretionary item or factor.

2. REQUEST FOR PROPOSAL DOCUMENTS

2.1 COPIES OF REQUEST FOR PROPOSALS

A. A complete set of the Request for Proposals may be obtained from the Contracting Agency (unless another issuing office is designated in the RFP).

B. A complete set of the Request for Proposals shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.

C. The Contracting Agency in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.

D. A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

2.2 INTERPRETATIONS

A. All questions about the meaning or intent of the Request for Proposals shall be submitted to the Procurement Manager of the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting Agency as having received the Request for Proposals. Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error which they may discover upon examination of the Request for Proposals.

2.3 ADDENDA

A. Addenda will be mailed by certified mail with return receipt requested, by facsimile or hand delivered

to all who are known by the Contracting Agency to have received a complete set of Request for Proposals.

B. Copies of Addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.

C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one which includes postponement of the date for receipt of Proposals.

D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued, and shall acknowledge their receipt in the Proposal transmittal letter.

3. PROPOSAL SUBMITTAL PROCEDURES

3.1 NUMBER, FORM AND STYLE OF PROPOSALS

A. Offerors shall provide 5 copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.

B. All proposals must be typewritten on standard 8 1/2" x 11" paper and bound on the left-hand margin;

C. A maximum of 25 pages, including title, index, etc., not including front and back covers and divider pages.

D. The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated:

- 1) Letter of Transmittal, if any;
- 2) Response to Specialized Design and Technical Competence;
- 3) Response to Capacity and Capability;
- 4) Response to Past Record of Performance;
- 5) Response to Familiarity with the Contracting Agency;
- 6) Response to Work to be done in New Mexico **[cannot to be used for federally funded projects]**;
- 7) Response to Current Volume of Work with the Contracting Agency not 75% Complete;

- 8) List of Subconsultants;
- 9) Campaign Contribution Disclosure form;
- and
- 10) Other supporting or resource material.

E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive and rejected on that basis.

F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal is kept confidential will not be acceptable. Only matters which clearly are of a confidential nature will be considered.

G. Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3.2 SUBCONSULTANTS

A. The Offeror shall list and state the qualifications for each Subconsultant the Offeror proposes to use for all subcontracted Work.

B. The Offeror is specifically advised that any person or other party, to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including but not limited to suspension or debarment by the Contracting Agency.

3.3 PREQUALIFICATION PROCESS

A business may be prequalified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such prequalified businesses (§13-1-134 NMSA 1978). For purposes of this RFP, if prequalification is utilized, special instructions will be attached as an exhibit to this RFP.

3.4 DEBARRED OR SUSPENDED CONTRACTORS

A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-77 through §13-1-180, and § 13-4-11 through §13-4-17 NMSA 1978,

as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

3.5 SUBMITTAL OF PROPOSALS

A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposals.

B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the Bid envelope: Project Title, Project N^o, Request for Proposals number, date of opening, and time of opening. If the Proposal is sent by mail, the sealed envelope shall have the notation "**SEALED PROPOSAL ENCLOSED**" on the face thereof.

C. Proposals received after the date and time for receipt of Proposals will be returned unopened.

D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing Agent's office, including those proposals submitted by mail. Hand-delivered proposals shall be submitted to the Purchasing Agent or his designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.

E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses and such other information as may be specified by the Purchasing Agent.

F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

3.6 CORRECTION OR WITHDRAWAL OF PROPOSALS

A. A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the

Request for Proposals as the place where Proposals are to be received.

B. Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.

3.7 NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR

A. In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state and local requirements which are a part of these Request for Proposals.

B. Laws and Regulations. The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the Project.

3.8 REJECTION OR CANCELLATION OF PROPOSALS

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefor shall be made part of the project file (§13-1-131 NMSA 1978).

4. CONSIDERATION OF PROPOSALS

4.1 RECEIPT, OPENING AND RECORDING

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information. (§13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§13-1-116 NMSA 1978).

4.2 PROPOSAL EVALUATION

A. Proposals shall be evaluated on the basis of

demonstrated competence and qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:

- 1) Acceptable,
- 2) Potentially acceptable, that is, reasonably assured of being made acceptable, or
- 3) Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).

B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror which do not alter the quality or quantity of the services (§131-132 NMSA 1978).

C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§13-1-133 NMSA 1978). Businesses which have not been selected shall be so notified in writing within twenty-one days after an award is made (§13-1-120 NMSA 1978).

D. Selection Process: (§13-1-120 NMSA 1978)

1) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the Contracting Agency. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may: a) rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or b) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to §13-1-104 NMSA 1978.

4.3 NEGOTIATIONS (§13-1-122 NMSA 1978)

A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

B. Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.

C. The designee shall then undertake negotiations with the third most qualified business.

D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated.

E. The Contracting Agency shall publicly announce the business selected for award.

4.4 NOTICE OF AWARD

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the Proposal and related documents by the Contracting Agency with reasonable promptness (§ 13-1-100 and §13-1-108 NMSA 1978).

5. POST-PROPOSAL INFORMATION

5.1 PROTESTS

A. Any Offeror who is aggrieved in connection with a solicitation or award of a Agreement may protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's Procurement

Regulations and the state Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (§13-1-172 NMSA 1978).

B. In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (§13-1-173 NMSA 1978).

C. The Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§13-1-174 NMSA 1978).

D. The Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

1) state the reasons for the action taken;
and

2) inform the protestant of the right to judicial review of the determination pursuant to §13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§13-1-176 NMSA 1978).

5.2 EXECUTION AND APPROVAL OF AGREEMENT

The Agreement shall be signed by the Successful Offeror and returned within an agreed upon time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

5.3 NOTICE TO PROCEED

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

5.4 OFFEROR'S QUALIFICATION STATEMENT

Offeror to whom award of a Agreement is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (§13-1-82 NMSA 1978)

6. CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION (§13-1-112 NMSA 1978)

6.1 A prospective contractor subject to the provisions of §13-1-191.1 NMSA 1978 shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official (governing body) of the Grantee during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. See Exhibit A – Campaign Contribution Disclosure Form.

6.2 The form shall be filed with the Grantee as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

6.3 A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

6.4 A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing or value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

6.5 A solicitation or proposed award for a proposed contract may be canceled pursuant to §13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to §13-1-181 NMSA

1978 if:

A. A prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

B. A prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

6.6 As used in this section:

A. *Applicable public official* means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal;

B. *Family member* means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law;

C. *Pendency of the procurement process* means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals;

D. *Prospective contractor* means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code, §13-1-28 NMSA 1978, or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract; and

E. *Representative of the prospective contractor* means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

7. OTHER INSTRUCTIONS TO OFFERORS
(If none, write none)

None.

GENERAL TERMS AND CONDITIONS

1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the state of New Mexico as the same from time to time exist.

2. INDEPENDENT CONTRACTORS

The Consultant (design professionals) and his agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

3. BRIBES, GRATUITIES AND KICK-BACKS

Pursuant to §3-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including §30-14-1, §30-24-2, and §30-41-1 through §30-41-3 NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, §13-1-28 through §13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation

4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT (Design Professional)

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

5. FEES

A lump sum fixed fee for Basic Service will be negotiated with the Offeror selected. Construction Observation will be calculated on a Payroll Cost times a multiplier³. Additional Services will be calculated on a Payroll Cost times a multiplier³. [Note: ³ or as appropriate or agreed upon]

6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

7. DESIGN PROFESSIONAL REGISTRATION

All work shall be under the direction of the applicable design professional legally licensed and registered by the state.

8. PROFESSIONAL LIABILITY INSURANCE

The Offeror ☒ will ☐ will not be required to carry professional liability (errors and omissions) insurance. If required to carry such insurance, the amount of coverage will be ☐ \$250,000, ☐ \$500,000, ☒ \$1,000,000.

Note to Owner regarding Evaluation Criteria

The Request for Proposal must include each of the following evaluation criteria* as required by statute (13-1-120.B NMSA 1978). Each proposal submitted must address the required evaluation criteria. Based on the complexity of the project, the owner may add additional items of concern. The Owner must include a weight factor with each of the evaluation criteria to communicate to the Offerors the relative importance of each.

EVALUATION CRITERIA:

1. Specialized Design and Technical Competence*

Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

2. Capacity and Capability*

Capacity and capability of the business to perform the work, including any specialized services, within the time frame

3. Past Record of Performance*

Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.

4. Familiarity with the Contracting Agency*

Proximity to or familiarity with the area in which the project is located.

5. Work to be Done in New Mexico*

The amount of design work that will be produced by a New Mexico business within this state. Note that this criteria is not allowed for federally funded projects.

6. Current Volume of Work with the Contracting Agency not 75% Complete*

The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services [through bidding phase], with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring the interest of the public in having available a substantial number of qualified businesses is protected; however, that the principal of selection of the most highly qualified business is not violated.

Firm should indicate the volume of work they currently have underway with the Contracting Agency that is less than 75 percent complete. The purpose of this criteria is to help distribute projects among qualified firms. An example of how points can be assigned is provided below:

Value of work not yet completed on projects that are not 75% Complete	(Example) Points to be allowed for this item
None	10
\$1 to \$ 25,000	8
25,001 to 50,000	7
50,001 to 75,000	5
75,001 to 100,000	4
100,001 or more	0

7. Other Contracting Agency Criteria

The Owner may add additional elements of interest, such as ability to conduct public meetings, and assign points according to importance. Note: Price **cannot** be a factor.

The evaluation criteria listed on pages 11 and 12 may be modified to fit the Owner's needs. Insert N/A if not applicable or not used in this evaluation.

EVALUATION CRITERIA

Criteria and Point Values

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.
[Note: Price **cannot** be a factor]

RATING SHEET FOR:

Applicant _____

PLANNING & DESIGN SERVICES

	Possible Points	Points this RFP
1. Specialized Design and Technical Competence*	[30]	_____
2. Capacity and Capability*	[25]	_____
3. Past Record of Performance*	[20]	_____
4. Familiarity with the Contracting Agency*	[10]	_____
5. Work to be Done in New Mexico*		
☒ This criteria is not allowed for federally funded projects.	[0]	<u> 0 </u>
6. Current Volume of Work with the Contracting Agency not 75% Complete *	[10]	_____
7. Other		_____
SUBTOTAL PLANNING & DESIGN SERVICES	[95]	_____

**Items required by statute (13-1-120.B NMSA 1978)*

RATING SHEET FOR:

Applicant _____

	Possible Points	Points this RFP
CONSTRUCTION SERVICES		
1. Specialized construction management experience.	[20]	_____
2. Specialized experience with start up assistance to the Owner of new facilities.	[15]	_____
3. Capacity and capability of the consultant to perform the work within the Owner's timeframe.	[15]	_____
4. History of past performance on the three similar projects itemized in PLANNING & DESIGN SERVICES in Item Number 1, including the record of bid amount versus final close out contract amount.	[10]	_____
5. History of claims on three similar construction projects and their resolution. The consultant should detail their claims avoidance approach and construction management philosophy.	[10]	_____
6. Other		_____
7. Other		_____
SUBTOTAL CONSTRUCTION SERVICES	[70]	_____
TOTAL SCORE	[170]	_____

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a

corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(The above fields are unlimited in size)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

*Rolf Hechler
Mayor*

*Amanda Forrister
Mayor Pro-Tem*

*Merry Jo Fahl
Commissioner*



*Destiny Mitchell
Commissioner*

*Ingo Hoeppner
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*

May 22, 2024

Alfredo Holguin, PE
Wilson & Company, Inc.
414 N Main St A
Las Cruces, NM 88001

RE: Notice of Award of Engineering Agreement for the City of Truth or Consequences CDBG Project No. 22-C-NR-I-01-G-01

Dear Mr. Holguin:

On behalf of the City of Truth or Consequences, I would like to thank you for submitting a proposal in response to our RFP 23-24-002 for engineering services for our CDBG project No. 22-C-NR-I-01-G-01. We appreciate your time, effort, and interest in the project related to this procurement.

I would like to notify you that the proposal you submitted is the best apparent solution to the project for which the procurement was issued.

The negotiated agreement for this project is enclosed. This agreement is not to exceed \$77,043.00 including NMGRT.

Please sign and return the enclosed agreement via email. We will email you an executed copy for your records. We look forward to the execution of this agreement and to working with your firm.

Sincerely,

Rolf Hechler
Mayor

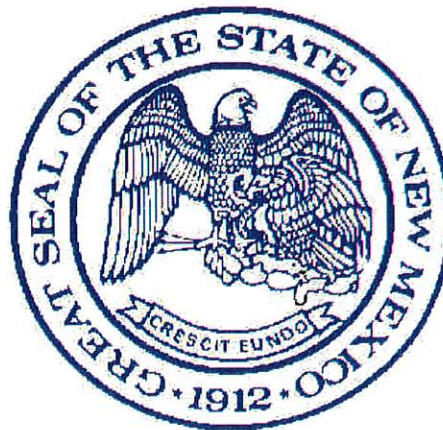
AGREEMENT BETWEEN OWNER AND ENGINEER

Project Truth or Consequences Water Meter Replacement

Contract No. _____

Project No. 22-C-NR-I-01-G-01

Representative



Distribution to:

- ☒ Owner
- ☒ Engineer
- ☒ LGD
- ☒ Other

This Agreement entered into this _____ day of _____, 2024, by and between

the "**Owner**"
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

and

the "**Engineer**"
Wilson & Company, Inc.
414 N Main St A
Las Cruces, NM 88001

Telephone: (575) 952-0565

Telephone: (575) 527-9257

Fax: (575) 894-7767

Fax: (575) 527-9258

Email: talvarez@torcnm.org

Email: alfredo.holquin@wilsonco.com

Professional and technical services shall be provided by the Engineer through the Project Engineer whose signature is contained on the signature page to this Agreement.

[This document was prepared to be used with Community Development Block Grant and incorporates the use of the standard Agreement for Engineering Services (Publicly Funded Project) used by other funding agencies including the New Mexico Environment Department and the New Mexico Finance Authority. **Additions to the standard agreement document include (SECTION A.22) MAXIMUM ALLOWABLE CONSTRUCTION COST and (SECTION A.23) FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES.** This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification]

**AGREEMENTS FOR ENGINEERING SERVICES
(Publicly Funded Project)**

THIS Agreement, made this day _____ of _____, 20 24 by and between
the City of Truth or Consequences hereinafter referred to as the OWNER,
and _____ Wilson & Company hereinafter referred to as the ENGINEER.

The OWNER intends to construct a Project consisting of

The City of Truth or Consequences' CDBG Water Meter Replacement project will consist of the design and construction related to the replacement of aged and deteriorated water meter assemblies. The current manual read water meters will be replaced with new advanced metering infrastructure radio read meters. The meter replacements will take place throughout the municipal water system service area which includes the City of TorC and Village of Williamsburg. The condition and location of the meter assemblies varies widely throughout the service area and therefore the location of the assemblies and surface improvements in _____ Sierra _____ County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any sub-agreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

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SECTION A - GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. 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 Contractor, Contractor's subcontractor, supplier, other 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 sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

(a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER, shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's 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 wishes greater assurance as to probable Construction Cost, OWNER shall employ ~~and~~ independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(g) The standard of care of 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 subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in

connection with ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5. Changes

(a) The OWNER may, at any time, with prior approval of the Funding Agency, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of

the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 9 of this clause.

7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. In addition, after fourteen (14) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

8. TIME

(a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.
5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. 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.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER'S control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the

amount specified below, not as a penalty, but as liquidated damages.

2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER fifty dollars (\$ 50.00) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the OWNER's prior written approval.

12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this

Agreement. Such insurance shall be in an amount not less than \$ 1,000,000.00 for injury to any one person and \$ 1,000,000.00 on account of any one accident and in the amount of not less than \$ 1,000,000.00 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$ 1,000,000.00 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

13. Environmental Condition of Site

- (a) Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- (b) Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- (c) If Engineer encounters an undisclosed Constituent of Concern, 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.
- (d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents 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 Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- (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 30 calendar 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 "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.

14. Mutual Waiver

To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, 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 the Project.

15. Independent Contractor

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

16. Equal Employment Opportunity

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

17. Gratuities

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

18. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

22. Maximum Allowable Construction Cost (for CDBG funded projects)

(a) Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Engineer represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Engineer does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Engineer.

(b) The Maximum Allowable Construction Cost (MACC) is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Engineer shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Engineer may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

(c) The acceptance by the Owner at any time during Basic Services of a revised Statement of Probable Construction Cost in excess of the then established MACC will constitute a corresponding increase in the MACC to the extent indicated in the revised statement.

(d) The Owner shall provide a written response to the funding agency of their acceptance of the increased MACC. This written response shall identify the source of the additional funds (or other procedure for covering the cost).

(e) If bidding or negotiations with potential contractors have not commenced within two months after the Engineer submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which bids are sought.

(f) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner with review by the funding agency may: a) give written approval of an increase in the MACC; b) authorize re-bidding the Project within a reasonable time, or c) cooperate with the Engineer in revising the Project scope and, as required to reduce the Probable Construction Cost.

(g) If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Engineer in revising the quality and scope of the Project; and the Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Engineer shall then assist the Owner through the Bidding process. When the cost estimate or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

(h) The MACC shall not exceed seven hundred twenty five thousand four hundred fifty seven dollars (\$ 725,457.00).

23. Federal Terms and Conditions for Professional Services (for CDBG funded projects)

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

(a) Termination of Contract for Cause. If, through any cause, the Engineer shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Engineer shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Engineer of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Engineer under this Contract shall, at the option of the Owner, become its property and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Engineer, and the Owner may withhold any payments to the Engineer for the purpose of set-off until such time as the exact amount of damages due the Owner from the Engineer is determined.

(b) Termination for Convenience of the Owner. The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Engineer. If the Contract is terminated by the Owner as provided herein, the Engineer will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Engineer, paragraph 1 hereof relative to termination shall apply.

(c) Changes. The Owner may, from time to time, request changes in the scope of the services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of the Engineer compensation, which are mutually agreed upon by and between the Owner and the Engineer, shall be incorporated in written amendments to this contract.

(d) Personnel.

1. The Engineer represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

2. All of the services required hereunder will be performed by the Engineer or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

3. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.

(e) Assign ability. The Engineer shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Engineer from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.

(f) Reports and Information. The Engineer, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

(g) Records and Audits. The Engineer shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.

(h) Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Engineer under this Contract are confidential and the Engineer agrees that they shall not be made available to any individual or organization without the prior written approval of the Owner.

(i) Copyright. No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Engineer.

(j) Compliance with Local Laws. The Engineer shall comply with all applicable laws, ordinances and codes of the state and the Owner, and the Engineer shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

(k) Equal Employment Opportunity. During the performance of this Contract, the Engineer agrees as follows:

1. The Engineer will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

2. The Engineer will, in all solicitation or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

3. The Engineer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that

the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4. The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Engineer's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Engineer will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the Owner's representative may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Owner, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(l) Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

(m) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(n) "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations

issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The contractor will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

(o) Interest of Members of the Owner. No member of the governing body of the Owner and no other officer, employee, or agent of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Engineer shall take appropriate steps to assure compliance.

(p) Interest of other Local Public Officials. No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Engineer shall take appropriate steps to assure compliance.

(q) Interest of Engineer and Employees. The Engineer covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Engineer further covenants that in the performance of this Contract, no person having any such interest shall be employed.

(r) Access to Records. The state funding (grantor) agency, the Department of Housing and Urban Development, 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 directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

(s) All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

SECTION B -ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

Engineering Services During the Planning Phase

1. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT A – Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
2. The ENGINEER shall, prior to completion of ninety (90) percent of the Planning Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Design Phase.

Engineering Services During the Design Phase

3. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT B – Design Services scope of work and cost proposal and section B-3 through B-11 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
4. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment II.
5. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.

6. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the OWNER's goals.

7. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.

8. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).

9. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.

10. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.

11. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.

12. Section B-3 through B-11 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

Engineering Services During the Construction Phase

13. ENGINEER shall complete the ENGINEER SERVICES described in EXHIBIT C – Construction Services scope of work and cost proposal and section B-13 through B-24 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.

14. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the

responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.

15. Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.

16. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.

17. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.

18. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality 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 Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the 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 Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

19. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

20. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.

21. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the

Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.

22. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.

23. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, the Funding Agency and others as required.

24. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.

25. Section B-13 through B-24 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

26. The ENGINEER shall complete the ENGINEERING SERVICES described in EXHIBIT D – Operational Services scope of work and cost proposal and section B-26 through B-31 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

27. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.

28. The ENGINEER shall provide to the OWNER monthly operation reports on the performance of the Project.

29. The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.

30. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the OWNER in writing whether the Project meets the project performance standards.

31. Section B-26 through B-30 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

SECTION C - ADDITIONAL ENGINEERING SERVICES

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the

ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.
2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.
3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.
5. Appear before courts or boards on matters of litigation related to the project.
6. Assist OWNER with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.
7. Prepare an operation and maintenance manual.
8. Provide construction-staking services.
9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
10. Provide services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its 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 Contract

Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Exhibit A to Attachment I.

12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.

13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.

14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Describe, attach or indicate "None")

None.

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below. **The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER:
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE: FUNDING AGENCY
AGENCY NAME: Dept. of Finance & Administration
Concurrence _____
Name, Title Stephanie Kramer, Project Manager
Date _____

- ☐ **ATTACHMENT I** - Compensation for Engineering Services During the Planning Phase
- ☒ **ATTACHMENT II** - Compensation for Engineering Services During the Design Phase
- ☒ **ATTACHMENT III** - Compensation for Engineering Services During the Construction Phase
- ☐ **ATTACHMENT IV** - Compensation for Engineering Services During the Operation Phase

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of _____, 2024 by and between the _____ City of Truth or Consequences, the OWNER, and _____ Wilson & Company, the ENGINEER, the OWNER and ENGINEER agree this ____ day of _____, 2024 that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

- ☐ **EXHIBIT A** – Planning Services scope of work and cost proposal
- ☒ **EXHIBIT B** – Design Services scope of work and cost proposal
- ☒ **EXHIBIT C** – Construction Services scope of work and cost proposal
- ☐ **EXHIBIT D** – Operational Services scope of work and cost proposal

2. Compensation for ENGINEERING SERVICES shall be by the

☒ **LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate EXHIBIT, shall not exceed \$ 71,325.81, excluding gross receipt tax and reimbursables.

☐ **STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate EXHIBIT shall not exceed _____ without prior written approval of the OWNER, with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES, shall be by the

☒ **LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate EXHIBIT, shall not exceed \$ 0.00 gross receipt tax and reimbursables.

☐ **STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate EXHIBIT shall not exceed _____ without prior written approval of the OWNER with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be _____ calendar days (or as specified in the Attachments or Exhibits)

5. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the

rates set forth in the appropriate EXHIBIT. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of _____. Reimbursable expenses shall not exceed the estimate in the EXHIBIT without prior written approval of the OWNER, with Funding Agency concurrence.

6. The method for interim or partial payments, such as milestone or time & materials, shall be as detailed below:

Invoice the 25th of every month with progress report.

7. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST: _____
Type Name _____
Title _____
Date _____

OWNER:
By _____
Type Name _____
Title _____
Date _____

ATTEST: _____
Type Name _____
Title _____
Date _____

ENGINEER:
By _____
Type Name _____
Title _____
Date _____

CONCURRENCE: FUNDING AGENCY
AGENCY NAME: Dept. of Finance & Administration
Concurrence _____
Name, Title Stephanie Kramer, Project Manager
Date _____

**Attachment II
Manhour Worksheet**

Project Name TorC CDBG Water Meter Replacement
Project Phase Design Phase
Project Number 23-600-599-00
Date: 5/3/2024
Owner: City of TorC
Engineer: Wilson & Company, Inc., Engineers & Architects

Job Description	Project Manager	Engineering Intern	Project Designer	Expense	Task Total:	Schedule/Notes:
Grade	P5	P1	PD3	Mileage		
Billing Rate:	\$ 212.00	\$ 108.00	\$ 128.00	\$ 0.655		
	Hrs.	Hrs.	Hrs.	\$	\$	
Task 01: Preliminary Design						
Field Data Collection	2	12	8	\$ 151.15	\$ 2,843.00	
Draft Contract Documents and Technical Specifications	2	16			\$ 2,152.00	
Plan Set Preparation	8	8	32		\$ 6,656.00	
Internal QA/QC & Address Internal Comments	4	8	4		\$ 2,224.00	
Packaging of Preliminary Design Package	1	4	4		\$ 1,156.00	
Virtual Design Review Mtg. with Owner	1	1	1		\$ 448.00	
Subtotal Hours (excl. NMGR):	18	49	49	151.15	\$ 15,479.00	
Task 02: Final Design						
Address Owner Comments from Preliminary Design	2	8	8		\$ 2,312.00	
Final Contract Documents and Technical Specifications	2	2	4		\$ 1,152.00	
Plan Set Preparation	8	16	18		\$ 5,728.00	
Internal QA/QC & Address Internal Comments	4	4	2		\$ 1,536.00	
Packaging of Preliminary Design Package	4	16	6		\$ 3,344.00	
Virtual Design Review Mtg. with Owner	6	20	4		\$ 3,944.00	
Address Final Owner & Agency Comments	1	2	2		\$ 684.00	
Subtotal Hours (excl. NMGR):	27	68	44	0	\$ 18,700.00	
Total Man-hours	45	117	93	151.15		
Subtotal Tasks 1 - 2 (Excl. NMGR):					\$ 34,179.00	
NMGR @ 7.6250					\$ 2,606.15	
Total incl. NMGR:					\$ 36,785.15	

**Attachment III
Manhour Worksheet**

Project Name TorC CDBG Water Meter Replacement
 Project Phase Construction Phase
 Project Number 23-600-599-00
 Date: 5/3/2024
 Owner: City of TorC
 Engineer: Wilson & Company, Inc., Engineers & Architects

Job Description	Project Manager	Project Engineer	Engineering Intern	Construction Observer	Expense Mileage	Task Total:	Schedule/Notes:
Grade	P5	P1	P3	FC5			
Billing Rate:	\$ 212.00	\$ 108.00	\$ 116.00	\$ 118.00	\$ 0.655		
	Hrs.	Hrs.	Hrs.	Hrs.	\$	\$	
Task 03: Bidding & Negotiation							
Bid Admin	6	20	16			\$ 5,288.00	
Pre-Bid Meeting (1)	4	4	4		150	\$ 1,842.25	
Bid Opening and Recommendation (1)	8	12	12		150	\$ 4,482.25	
Subtotal Hours (excl. NMGR):	18	36	32	0	300	\$ 11,612.50	
Task 04: Construction Administration							
Project Management, Invoicing & Progress Reports (3 months)	3	3				\$ 960.00	
Submittals Reviews & Approvals	2	4	10			\$ 2,016.00	
Construction Progress Meetings (3 Virtual Mtg.)	3	6		2		\$ 1,520.00	
Pay Applications, CO/FO Review, Processing, Coord. with RPR	4	8	4			\$ 2,176.00	
Substantial Completion Walkthrough Mtg. (1)	4			4	150	\$ 1,418.25	
Final Completion Walkthrough Mtg (1)				3		\$ 354.00	
Project Closeout Process	4	4	2	2		\$ 1,748.00	
11-Month Warranty Walkthrough & Coordination with Contractor	4			4	150	\$ 1,418.25	
Subtotal Hours (excl. NMGR):	24	25	16	15	300	\$ 11,610.50	
Task 05: Part-Time Construction Observation							
Part-Time Construction Observation - RPR On-Site (60 Working Days)				117	180	\$ 13,923.81	
Subtotal Hours (excl. NMGR):	0	0	0	117	180	\$ 13,923.81	
Total Man-hours	42	61	48	132	780		
Subtotal Tasks 3 - 5 (Excl. NMGR):						\$ 37,146.81	
NMGR @ 8.375% (TorC Rate - Project Site as Required by State of NM)						\$ 3,111.04	
Total incl. NMGR:						\$ 40,257.85	

May 3, 2024

Angie Gonzales
City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

Subject: **Exhibit B - Design Services Scope of Work – Project #23-600-599-00
Truth or Consequences Water Meter Replacement**

Dear Mrs. Gonzales:

Thank you for selecting Wilson & Company to complete the engineering services related to the City's CDBG Water Meter Replacement project. The project will consist of the design and construction related to the replacement of aged and deteriorated water meter assemblies. The current manual read water meters will be replaced with new advanced metering infrastructure (AMI) radio read meters. The meter replacements will take place throughout the municipal water system service area which includes the City of TorC and Village of Williamsburg. The condition and location of the meter assemblies varies widely throughout the service area and therefore the location of the assemblies and surface improvements to be replaced will vary as well. In locations where the existing meter can assemblies have failed and are located within the sidewalks, the improvements will also include the replacement of the meter setters, meter cans, lids, plus the removal and replacement of the sidewalk section as needed to complete the installation.

Based on preliminary planning estimates, the project will include the replacement of approximately 981 meters, 98 meter assemblies and 88 square yards of sidewalk removal & replacements. The current state of the inflated construction costs will be the deciding factor for the actual number of meters that can be replaced with the funding available.

Project Scope/Services to be completed as part of the Design Phase of the project:

- 1) Engineering Design:
 - a. Preliminary Design:
 - i. Prepare plan drawings to a 50% level of completion
 1. Field Data Confirmations
 2. Prepare Draft Contract Documents & Technical Specifications
 3. Internal QA/QC review of all deliverables
 4. Submit 50% design to Owner for review and comments.
 5. Hold plan review meeting with Owner
 - b. Final Design:
 - i. Design to 100% Completion
 1. Address Client comments on 50% package
 2. Prepare plan drawings to 100% level of completion
 3. Prepare Final Contract Documents & Technical Specifications
 4. Prepare Engineers Opinion of Probable Cost
 5. Internal QA/QC review of all deliverables

6. Submit 100% design package to Owner & Agency for final review and approval.
7. Address Owner & Agency comments and finalize for bidding.

Final Design Phase deliverables will include:

1. Signed and sealed Construction Plan Set prepared in 22x34 sheets to allow for true half size printing
2. CDBG format Contract Documents ready for bidding phase services
3. Project specific Technical Specifications
4. Finalized engineer's estimate of probable construction cost.

Compensation:

The design phase services will be completed with deliverables as listed above provided for a lump sum cost of **\$34,179.00** excluding gross receipt tax, as shown on Attachment II.

Timeline for Completion of Project:

The contract time for the preliminary design phase shall be 60 calendar days from the date of the Owner's signature below. The contract time for the final design phase shall be 30 calendar days from the date of receipt of all comments from the Owner and Agency

If you have any questions, you may contact Alfredo Holguin at 575-642-8537 or by email at Alfredo.Holguin@wilsonco.com.

Sincerely,
WILSON & COMPANY

Brian P. McBride, P. E.
Vice President

Acceptance:

On behalf of the City of Truth or Consequences, I am authorized to agree to and accept the terms and conditions of this Agreement as outlined above, and hereby authorize Wilson & Company to proceed.

City of Truth or Consequences

Signature: _____
Name: Angie Gonzales
Title: City Manager
Date: _____

May 3, 2024

Angie Gonzales
City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

Subject: **Exhibit C – Construction Services Scope of Work – Project #23-600-599-00
Truth or Consequences Water Meter Replacement**

Dear Mrs. Gonzales:

Thank you for selecting Wilson & Company to complete the engineering services related to the City's CDBG Water Meter Replacement project. The project will consist of the design and construction related to the replacement of aged and deteriorated water meter assemblies. The current manual read water meters will be replaced with new advanced metering infrastructure (AMI) radio read meters. The meter replacements will take place throughout the municipal water system service area which includes the City of TorC and Village of Williamsburg. The condition and location of the meter assemblies varies widely throughout the service area and therefore the location of the assemblies and surface improvements to be replaced will vary as well. In locations where the existing meter can assemblies have failed and are located within the sidewalks, the improvements will also include the replacement of the meter setters, meter cans, lids, plus the removal and replacement of the sidewalk section as needed to complete the installation.

The construction phase services for this project will be to complete the bidding, construction administration and construction observation for the water meter replacement project as approved by the City.

Project Scope/Services to be completed as part of the Construction Phase of the project:

- 1) Bidding Services: To comment once final approval of the design package is received
 - a. Distribution of plans and project manuals to Bidder's through Wilson Website
 - b. Coordination & Advertisement for bids to Las Cruces Sun News
 - c. Facilitate pre-bid meeting
 - d. Respond to Contractors questions and issue addenda
 - e. Facilitate bid-opening
 - f. Review bids, prepare bid tabulation, and recommendation of award
- 2) Construction Administration:
 - a. Conform construction documents for awarded contractor
 - b. Facilitate Pre-Construction conference
 - c. Review Shop Drawing Submittals
 - d. Respond to Contractor's RFI's during Construction (Assume 2 total)
 - e. Review of Contractors Application for Payment (Assume 2 total)
 - f. Issue Clarifications and Field Directives (Assume 2 total)
 - g. Review change order proposals and make recommendation (assume 1)
 - h. Attend monthly construction progress meetings (assume 1-hr/ea.)
 - i. Attend Substantial Completion Walk-through and prepare punch list

- j. Attend Final Completion Walk-through
- k. Coordination with Contractor and Owner for all close out documents
- l. Attend 11-Month Warranty Walk-through

3) Part-Time Construction Observation:

- a. Periodic part-time field observations of completed work
- b. Review and verification of Quantities
- c. Quantity tracking and initial review of pay applications with Contractor
- d. Prepare Daily Field Report
- e. Attend Substantial Completion Walk-through, prepare punch list
- f. Attend Final Completion Walk-through
- g. Attend 11-Month Warranty Walk-through

Compensation:

The construction phase services will be completed as listed above provided for a lump sum cost of **\$37,146.81** excluding gross receipt tax, as shown on Attachment III.

Timeline for Completion of Project:

The contract time for the construction administration and observation services are based on a 75-calendar day construction contract. Completion of close out documents shall be 30 calendar days from the date of receipt of all final pay application items from the Contractor.

Billing Terms:

Progress reports and invoices will be submitted monthly through completion of the work.

If you have any questions, you may contact Alfredo Holguin at 575-642-8537 or by email at Alfredo.Holguin@wilsonco.com.

Sincerely,
WILSON & COMPANY

Brian P. McBride, P. E.
Vice President

Acceptance:

On behalf of the City of Truth or Consequences, I am authorized to agree to and accept the terms and conditions of this Agreement as outlined above, and hereby authorize Wilson & Company to proceed.

City of Truth or Consequences

Signature: _____
Name: Angie Gonzales
Title: City Manager
Date: _____

EXHIBIT 1-A – FULL PROJECT

PROJECT DESCRIPTION

GRANTEE NAME City of Truth or Consequences

PROJECT NUMBER 22-C-NR-I-01-G-01

GRANT AMOUNT \$750,000

PROJECT DESCRIPTION

The City of Truth or Consequences' CDBG Water Meter Replacement project will consist of the design and construction related to the replacement of aged and deteriorated water meter assemblies. The current manual read water meters will be replaced with new advanced metering infrastructure radio read meters. The meter replacements will take place throughout the municipal water system service area which includes the City of T or C and Village of Williamsburg. The condition and location of the meter assemblies varies widely throughout the service area and therefore the location of the assemblies and surface improvements to be replaced will vary as well. In locations where the existing meter assemblies have failed and are located within the sidewalks, the improvements will also include the replacement of the meter setters, meter cans, lids, plus the removal and replacement of the sidewalk section as needed to complete the installation.

The full scope of the project will include the replacement of approximately 981 meters, 98 meter assemblies and 88 square yards of sidewalk removal & replacements. The general scope of work is the same for the full and phased projects, with the only difference for the phased approach being a reduction in quantity. The state of the inflated construction costs will be the deciding factor for the overall completion of the intended project. The best-case scenario will involve reasonable bids for the completion of the work that will allow the City to replace all 981 water meters and accompanying appurtenances. The worst-case scenario will involve inflated bids, reducing the number of meters that can be replaced and therefore require a ranking and/or prioritization of replacing those meters that are in the worst condition first.

The project will be located at 33.129301789377934 latitude, -107.25617617795145 longitude.

NATIONAL OBJECTIVE (from DFA/LGD approved survey)

This project will benefit 6,020 total beneficiaries of which 52.74% are Low and Moderate Income (LMI).

CASH MATCH and LEVERAGING (from 2014 CDBG Application)

The City of Truth or Consequences will provide a 10% Cash Match of \$75,000.

Exhibit 1-C

Project Cost/Financing Summary

Entity Name: <u>City of Truth or Consequences</u>		☒ Grant Agreement		CDBG Amount: <u>\$ 750,000.00</u>		
CDBG Project Number: <u>22-C-NR-I-01-G-01</u>		☐ Grant Amendment		Other Amount: <u>\$ 75,000.00</u>		
Project Cost Activities	Project Funding Sources					Total Project Cost
	CDBG Funds	Other Sources (Identify other local, state, federal, or private)				
		Cash Match	Leverage			
Administration (Contractual)	\$ 22,500.00					\$ 22,500.00
Architect/Engineer	\$ 69,338.70	\$ 7,704.30				\$ 77,043.00
Other Professional						\$ -
Inspection (Testing)						\$ -
Property Acquisition						\$ -
Property Rehabilitation						\$ -
Construction	\$ 658,161.30	\$ 67,295.70				\$ 725,457.00
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
Totals	\$ 750,000.00	\$ 75,000.00	\$ -	\$ -	\$ -	\$ 825,000.00



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.9

SUBJECT: Discussion/Action - Contract Between the City of Truth or Consequences and South-Central Solid Waste Authority

DEPARTMENT: Community Development

DATE SUBMITTED: May 17, 2024

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Purpose of the Contract - to transfer Municipal Solid Waste (as defined in the New Mexico Solid Waste Act) for the City of Truth or Consequences.

Recommendation:

Approve Government to Government Contract

Attachments:

- Contract
-

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-22-24

CONTRACT BETWEEN THE CITY OF TRUTH OR CONSEQUENCES AND SOUTH CENTRAL SOLID WASTE AUTHORITY

This Contract entered into by and between the City of Truth or Consequences, hereinafter referred as the "City," and **South Central Solid Waste Authority** hereinafter referred to as the "Contractor," to transfer Municipal Solid Waste (as defined in the New Mexico Solid Waste Act) for the City of Truth or Consequences. The Contractor is a state agency that was created by an appropriately executed Joint Powers Agreement. The parties can therefore enter into this Contract as a government-to-government Contract. As such, this Contract is exempt from the provisions of the State of New Mexico Procurement Code, pursuant to §13-1-98.

ARTICLE 1. MATERIAL TO BE PROVIDED: When requested, Contractor shall provide solid waste/transfer station hauling services as specified in the RFP and response documents for the City of Truth or Consequences. The Contractor shall have available the service required on an as ordered basis.

The parties had already successfully cooperated with each other in a January, 2016 Contract pursuant to a City's Request for Proposals (RFP) # 15-16-001. The Contractor shall continue to provide the services in accordance with the provisions of that Contract which included the RFP and the Contractor's responses thereto.

ARTICLE 2. PERIOD OF PERFORMANCE: The period of performance of this Contract shall begin from **July 1, 2024**. The Contract shall continue unless either party exercises its right to termination pursuant to paragraph 9 herein.

ARTICLE 3. PLACE OF PERFORMANCE: Contractor shall have available the item(s) and provide the service as per contract.

ARTICLE 4. ESTIMATED COST: The City procured a "Solid Waste Cost of Service and Rate Design Study" from Parkhill, Smith and Cooper dated January, 2024. Pursuant to the terms of the study, the Contractor's Disposal Rates Per Ton shall be in accordance with the following schedule:

South Central Solid Waste Authority Disposal Rate Per Ton

FY 2023 Revenue	FY 2024 Revenue	FY 2025 Revenue	FY 2026 Revenue	FY 2027 Revenue	FY2028 Revenue
\$57.01	\$61.00	\$65.27	\$68.53	\$71.96	\$75.56

Commencing in the year 2029 the rates will be adjusted annually consistent with the Consumer Price Index (CPI).

ARTICLE 5. NOTICES AND INVOICES: Invoices shall be mailed to Accounts Payable Office, 505 Sims Street, Truth or Consequences, New Mexico, 87901. All other correspondence shall be submitted jointly to:

CITY OF Truth or Consequences
505 Sims Street
T or C, NM 87901
575-894-6673 Ext. 320
FAX 575-894-0363
e-mail: agonzales@torcnm.org

ARTICLE 6. ASSIGNMENT OF CLAIMS: The Contractor shall not assign or delegate any interest in this Contract or transfer any interest or assign any claims for money due or to become due under this Contract, without the written consent of the City.

ARTICLE 7. MUTUAL HOLD HARMLESS AND INDEMNIFY CLAUSE: The contractor shall indemnify, defend and hold harmless the City, their officers, agents and employees from and against any liability, claims, damages, losses, expenses, actions and suits whatsoever, including injury or death of others or any employees of the contractor, or sub-contractor caused by or arising out of the performance, act or omission by the contractor of any term of this contract.

Likewise, the City shall indemnify, defend and hold harmless the contractor, their officers, agents and employees from and against any liability, claims, damages, losses, expenses, actions and suits whatsoever, including injury or death of others or any employees of the City caused by or arising out of the performance, act or omission by the City of any term of this contract.

ARTICLE 8. INSURANCE: For the duration of the contract and until all work specified in the contract is completed the Contractor shall maintain in effect all insurance as required below and comply with all limits, terms and conditions stipulated therein.

Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the Finance Department.

Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent for the Contractor and returned to the City. If for any reason, any material change occurs in the coverage during the course of the contract such change will not become effective until thirty (30) days after the City has received written notice of such change.

A. The policy shall be written and the certificate shall reflect that:

1. All insurance required below is in *effect*.
 2. The City is an additional insured on the Contractor's general liability policy with respect to activities under the contract.
 3. The insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
 4. The insurance afforded therein shall be primary insurance and any insurance or self- insurance of the City shall be excess and not contributory insurance.
 - i. Being that both Parties are governmental agencies and members of the New Mexico Self Insurance Pool, the contractor shall obtain insurance of the types described below from the New Mexico Self Insurance Fund.
1. Commercial General Liability insurance shall cover liability arising from products and completed operations, premises, contractual liability, personal injury, and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance limiting coverage for claims arising from explosion, collapse or underground exposures.
 2. Worker's Compensation Insurance as required by the State.

3. Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles.

B. Contractor shall maintain insurance coverage to meet the limits set in place by the New Mexico Tort Claims Act.

1. \$100,000 for damage to or destruction of property arising out of a single occurrence;
2. \$300,000 for all past and future medical and medically related expenses arising out of a single occurrence;
3. \$400,000 to any person for any number of claims arising out of a single occurrence;
4. \$750,000 for all claims other than medical or medically related expenses arising out of a single occurrence;
5. Worker's Compensation Insurance as required by statute.

Contractor shall hold harmless, indemnify and defend the City and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, fees of attorneys, costs and/or actions of any kind and nature whether from death, bodily injury or damage to property resulting from or related to the Contractor's negligence or intentional acts, errors or omissions in the Contractor's performance under this Contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this Contract, for negligence, acts, errors or omissions to act occurring during the term of this Contract.

ARTICLE 9. TERMINATION: Either party may terminate this Contract with or without cause by providing written notice to the other party six (6) months in advance of the termination. In the event of a Contract termination, the Contractor shall be reimbursed for completed work that is approved by the City.

ARTICLE 10. RELEASE: The Contractor, upon final payment of the amount due under this Contract for work completed and approved by the City, releases the City, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City, unless the Contractor has express written authority from an authorized City employee to do so, and then only within the limits of the expressed written authority.

ARTICLE 11. CONFLICT OF INTEREST: The Contractor warrants that he presently has no interest, and shall not acquire any interest during the term of this Contract, which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall be brought to the attention of the City and appropriate action acceptable to the City shall be taken. The Contractor's failure to inform the City of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the City.

ARTICLE 12. INDEPENDENT CONTRACTOR: Nothing in this Contract is intended, or should be construed in any way, to create or establish a partnership relationship between the parties or to establish the Contractor as an agent, representative or employee of the City for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the City.

Contractor is an independent Contractor of the City. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the City and shall not bind the City in any respect.

ARTICLE 13. PROCUREMENT CODE: As noted in the preamble of this Contract, this Agreement is a government-to-government Contract, and is thus exempted from the provisions of the Procurement Code as per the provisions of §13-1-98, N.M.S.A. (1978)

ARTICLE 14. AMENDMENT: This Contract shall not be altered, changed or amended except by a written instrument signed by both parties.

ARTICLE 15. SOVEREIGN IMMUNITY: By entering into this Contract, the City and its "public employees" as defined in the New Mexico Tort Claims Act, supra, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, supra.

ARTICLE 16. WAIVER: Any waiver of any breach of any covenant, term, condition or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a default for any succeeding breach either of the same covenant, term, condition or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 17. MERGER OF PRIOR AGREEMENTS: This Contract incorporates all the conditions, agreements and understandings of the parties concerning the subject matter of the Contract. All such conditions, understandings and agreements have been merged into this written Contract. No prior condition, agreement or understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Contract.

ARTICLE 18. PARAGRAPH HEADINGS: Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

ARTICLE 19. THIRD PARTY BENEFICIARY: It is agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create on behalf of the public or any member thereof the status of third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit based upon this Contract.

ARTICLE 20. PERSONAL LIABILITY: No elected or appointed official, employee, servant, agent or law enforcement officer of the City shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

ARTICLE 21. GOVERNING LAW: This contract shall be construed in agreement with the Laws of the State of New Mexico. The Contractor shall also comply with all applicable Federal and local laws, ordinances, and the rules and regulations of the City.

ARTICLE 22. BINDING EFFECT OF AGREEMENT: Both parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding on the administrators, assigns, and successors of the Contracting Parties.

ARTICLE 23. SEVERABILITY: If any clause or provision of the Contract is held to be illegal, invalid or unenforceable, the remainder of the Contract shall remain in full force and effect. However, in the event that neither party can reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either party, the Contract is void and no damages shall accrue to either party.

ARTICLE 24. ARBITRATION: In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the City and the Contractor, it shall be resolved by arbitration in New Mexico in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award rendered may be entered into any court having jurisdiction. All attorneys' fees and associated expenses shall be awarded as decided by the Arbitrator.

ARTICLE 25. NOTICE TO PROCEED: It is expressly understood that this Contract is not binding upon the City until approved and signed by the City and, further, that the Contractor is not to proceed with its obligations under the Contract until the Contractor has received a fully signed copy of the Contract.

ARTICLE 26. NON-APPROPRIATION: The City's obligation to make payment under the terms of this Agreement are contingent upon its appropriation of sufficient funds to make those payments. If the City does not appropriate funds for the continuation of this Contract, this Contract will terminate upon written notice of that effect to the Principal. The City's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.

ARTICLE 27. DUPLICATE ORIGINALS: This document shall be executed in no less than four (4) counterparts, each of which shall be deemed an original.

ARTICLE 28. SUB-CONTRACT: The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the City or as negotiated and made part of this Agreement.

CITY OF TRUTH OR CONSEQUENCES

CONTRACTOR

Rolf Hechler, Mayor

Date _____

As to Legal Sufficiency:

Jay Rubin, Attorney

Date: _____

Print Name

Address: _____

CRS #: _____

Angela Torres, City
Clerk-Treasurer

Date: _____

Federal Tax ID #or SS#: _____

Telephone#: _____

Date: _____



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 22, 2024

Agenda Item #: H.10

SUBJECT: Approval of the Records Inventory List for destruction
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: May 16, 2024
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

The Municipal Court has 87 boxes of records that are ready for destruction. If approved by the governing body, a date of destruction will be scheduled.

Recommendation:

Approve the Municipal Court Records inventory List for destruction.

Attachments:

- Municipal Court Records inventory List

Fiscal Impact (Finance): Choose an item.

[Click here to enter text.](#)

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 5-22-2024

Department	Description of Record	Year of Record	Item # Authorizing	Archive Box Number	Date Destroyed
Police (Court)	CLOSED CASES 1994 Q-Z	1994	1.21.2.613	2024-1	
Police (Court)	CLOSED CASES ALTERNATIVE SENTENCE	2003	1.21.2.613	2024-2	
Police (Court)	CLOSED CASES 2009 L-M	2009	1.21.2.613	2024-3	
Police (Court)	CLOSED CASES 2008 A-B, H-J	2008	1.21.2.613	2024-4	
Police (Court)	CLOSED CASES 2008 G-H	2008	1.21.2.613	2024-5	
Police (Court)	FY 2010-2011 LOGS, REPORTING	2010/2011	1.21.2.613	2024-6	
Police (Court)	CLOSED CASES 2010 A-G	2010	1.21.2.613	2024-7	
Police (Court)	CLOSED CASES 2010 H-P	2010	1.21.2.613	2024-8	
Police (Court)	CLOSED CASES 2010 Q-Z	2010	1.21.2.613	2024-9	
Police (Court)	FY 2011 LOGS, REPORTING	2011	1.21.2.613	2024-10	
Police (Court)	CLOSED CASES 2011 A-D	2011	1.21.2.613	2024-11	
Police (Court)	CLOSED CASES 2011 E-M	2011	1.21.2.613	2024-12	
Police (Court)	CLOSED CASES 2011 M-Z	2011	1.21.2.613	2024-13	
Police (Court)	CLOSED CASES 2012 A-B	2012	1.21.2.613	2024-14	
Police (Court)	CLOSED CASES 2012 C-F	2012	1.21.2.613	2024-15	
Police (Court)	CLOSED CASES 2012 G-L	2012	1.21.2.613	2024-16	
Police (Court)	CLOSED CASES 2012 M-O	2012	1.21.2.613	2024-17	
Police (Court)	CLOSED CASES 2012 P-S	2012	1.21.2.613	2024-18	
Police (Court)	CLOSED CASES 2012 T-Z	2012	1.21.2.613	2024-19	
Police (Court)	FY 2013-2014 LOGS, REPORTING	2014 JAN-JUNE	1.21.2.613	2024-20	
Police (Court)	FY 2012-2013 LOGS, REPORTING	2012 SEPT-AUG	1.21.2.613	2024-21	
Police (Court)	FY 2013 LOGS, REPORTING	2013 JAN-JUNE	1.21.2.613	2024-22	
Police (Court)	FY 2013 LOGS, REPORTING	2013 JULY-DEC	1.21.2.613	2024-23	
Police (Court)	CLOSED CASES 2013 A-C	2013	1.21.2.613	2024-24	
Police (Court)	CLOSED CASES 2013 D-H	2013	1.21.2.613	2024-25	
Police (Court)	CLOSED CASES 2013 I-M	2013	1.21.2.613	2024-26	
Police (Court)	CLOSED CASES 2013 N-R	2013	1.21.2.613	2024-27	

Department	Description of Record	Year of Record	Item # Authorizing Destruction	Archive Box Number	Date Destroyed
Police (Court)	CLOSED CASES 2014 A-C	2014	1.21.2.613	2024-28	
Police (Court)	CLOSED CASES 2014 D-J	2014	1.21.2.613	2024-29	
Police (Court)	CLOSED CASES 2014 K-O	2014	1.21.2.613	2024-30	
Police (Court)	CLOSED CASES 2014 P-S	2014	1.21.2.613	2024-31	
Police (Court)	CLOSED CASES 2014 ST-Z	2014	1.21.2.613	2024-32	
Police (Court)	CLOSED CASES WARNING U-Z	2014	1.21.2.613	2024-33	
Police (Court)	FY 2014-2015 LOGS, REPORTING	2014 JULY-DEC	1.21.2.613	2024-34	
Police (Court)	FY 2014-2015 LOGS, REPORTING	2015 JAN-JUNE	1.21.2.613	2024-35	
Police (Court)	CLOSED CASES 2015 WARNING A-Z, LOGS	2015	1.21.2.613	2024-36	
Police (Court)	CLOSED CASES 2015 T-Z	2015	1.21.2.613	2024-37	
Police (Court)	CLOSED CASES 2015 R-S	2015	1.21.2.613	2024-38	
Police (Court)	CLOSED CASES 2015 M-P	2015	1.21.2.613	2024-39	
Police (Court)	CLOSED CASES 2015 A-C	2015	1.21.2.613	2024-40	
Police (Court)	CLOSED CASES 2015 D-G	2015	1.21.2.613	2024-41	
Police (Court)	CLOSED CASES 2015 H-M	2015	1.21.2.613	2024-42	
Police (Court)	FY 2015-2016 LOGS, REPORTING	JULY 2015-JUNE 2016	1.21.2.613	2014-43	
Police (Court)	CLOSED CASES 2016 A-C, WARNINGS A-Z	2016	1.21.2.613	2024-44	
Police (Court)	CLOSED CASES 2016 D-K	2016	1.21.2.613	2024-45	
Police (Court)	CLOSED CASES 2016 L-R	2016	1.21.2.613	2024-46	
Police (Court)	CLOSED CASES 2016 S-Z	2016	1.21.2.613	2024-47	
Police (Court)	2017 LOGS, REPORTING	2017	1.21.2.613	2024-48	
Police (Court)	FY 2017-2018 LOGS, REPORTING	JULY 2017-JUNE 2018	1.21.2.613	2024-49	
Police (Court)	FY 2016-2017 LOGS, REPORTING	JULY 2016-JUNE 2017	1.21.2.613	2024-50	
Police (Court)	CLOSED CASES 2017 S-Z	2017	1.21.2.613	2024-51	
Police (Court)	CLOSED CASES 2017 M-R	2017	1.21.2.613	2024-52	
Police (Court)	CLOSED CASES 2017 H-M	2017	1.21.2.613	2024-53	
Police (Court)	CLOSED CASES 2017 D-G	2017	1.21.2.613	2024-54	

Department	Description of Record	Year of Record	Item # Authorizing Destruction	Archive Box Number	Date Destroyed
Police (Court)	CLOSED CASES 2017 A-C	2017	1.21.2.613	2024-55	
Police (Court)	CLOSED CASES 2018 S-Z	2018	1.21.2.613	2024-56	
Police (Court)	CLOSED CASES 2018 M-R	2018	1.21.2.613	2024-57	
Police (Court)	CLOSED CASES 2018 I-L	2018	1.21.2.613	2024-58	
Police (Court)	CLOSED CASES 2018 C-H	2018	1.21.2.613	2024-59	
Police (Court)	CLOSED CASES 2018 A-C	2018	1.21.2.613	2024-60	
Police (Court)	1994-2003 LOGS, REPORTING, MEMOS	1994-2003	1.21.2.613	2024-61	
Police (Court)	CLOSED CASES 1996 L-Z	1996	1.21.2.613	2024-62	
Police (Court)	CLOSED CASES 1996 A-K	1996	1.21.2.613	2024-63	
Police (Court)	CLOSED CASES 1998 M-Z	1998	1.21.2.613	2024-64	
Police (Court)	CLOSED CASES 1994 A-D	1994	1.21.2.613	2024-65	
Police (Court)	CLOSED CASES 2007 M-S	2007	1.21.2.613	2024-66	
Police (Court)	BOND RECEIPTS BOOKS 1991-2013	1991-2013	1.21.2.613	2024-67	
Police (Court)	CLOSED CASES 1993 A-I	1993	1.21.2.613	2024-68	
Police (Court)	2009-2012 LOGS, REPORTING, MEMOS	2009-2013	1.21.2.613	2024-69	
Police (Court)	CLOSED CASES 1994 A-P	1994	1.21.2.613	2024-70	
Police (Court)	CLOSED CASES 2006	2006	1.21.2.613	2024-71	
Police (Court)	CLOSED CASES 2003 A-H	2003	1.21.2.613	2024-72	
Police (Court)	CLOSED CASES 1995 A-G	1995	1.21.2.613	2024-73	
Police (Court)	CLOSED CASES 2006 L-R	2006	1.21.2.613	2024-74	
Police (Court)	2003-2005 LOGS, REPORTING, MEMOS	2003-2005	1.21.2.613	2024-75	
Police (Court)	CLOSED CASES 1999 A-N	1999	1.21.2.613	2024-76	
Police (Court)	CLOSED CASES 1991 A-Z	1991	1.21.2.613	2024-77	
Police (Court)	CLOSED CASES 2001-A-L	2001	1.21.2.613	2024-78	
Police (Court)	CLOSED CASES 2007 A-G	2007	1.21.2.613	2024-79	
Police (Court)	CLOSED CASES A-J	2009	1.21.2.613	2024-80	
Police (Court)	CLOSED CASES ALTERNATIVE SENTENCE	2001-2013	1.21.2.613	2024-81	

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