CITY OF LAS VEGAS
REGULAR CITY COUNCIL AGENDA
November 20, 2018–Tuesday– 6:00 p.m.
City Council Chambers
1700 N. Grand Avenue

(The City Council shall act as the Housing Authority Board of Commissioners on any matters on the Agenda concerning the Housing Department.)

I. **CALL TO ORDER**

II. **ROLL CALL**

III. **PLEDGE OF ALLEGIANCE**

IV. **MOMENT OF SILENCE**

V. **APPROVAL OF AGENDA**

VI. **APPROVAL OF MINUTES (October 10th and October 17, 2018)**

VII. **MAYOR'S APPOINTMENTS/REPORTS**

VIII. **MAYOR'S RECOGNITIONS/PROCLAMATIONS**

- Recognition for the Las Vegas Outlaws Youth Football Team

IX. **PUBLIC INPUT**
(not to exceed 3 minutes per person and persons must sign up at least fifteen (15) minutes prior to meeting)

X. **PRESENTATIONS (Not to exceed 10 minutes per person)**

- Presentation by Leo Maestas on the Mass Casualty Plan.
- Presentation by John Spencer, Tree Board Update.

XI. **CITY MANAGER'S REPORT**

David Ulibarri
Councilor Ward 1

Vince Howell
Councilor Ward 2

Barbara Perea-Casey
Councilor Ward 3

David G. Romero
Councilor Ward 4

XII. FINANCE REPORT

XIII. CONSENT AGENDA

(Items may be moved to New Business at the request of any Councilor with approval of the Governing Body)

1. Approval to accept funding through the Department of Justice to purchase bullet proof vests through a 50/50 match for the Las Vegas City Police Department.

   Pam Sandoval, Interim Commander The Las Vegas City Police Department is requesting approval to accept funding in the amount of $2,015.00 from the Department of Justice for a 50/50 match to purchase officers bullet proof vests.

2. Approval to Reject Bid #2019-03 for the Senior Center Service Access Parking Lot Reconstruction.

   Wanda Salazar, Senior Center Manager The single bid received was over budget.

3. Approval of Resolution #18-45 Budget Adjustment Resolution.

   Tana Vega, Interim Finance Director The City of Las Vegas is requesting increases to the FY2019 budgeted revenues and expenditures, transfers to and from within various funds of the FY2019 Budget.

4. Approval and certification of fixed assets/inventories.

   Tana Vega, Interim Finance Director The City of Las Vegas has compiled the 2018 fixed assets and inventories and is ready for review and approval by Mayor and Council.

5. Approval of Resolution No. 18-44 to approve and support a request for a one-year extension to FY 2017/2018 Project No. MAP-7647(911).

   Danny Gurule, Interim Public Works Director As part of the Cooperative Agreement submittal criteria for New Mexico Department of Transportation Municipal Arterial Program (MAP), a Resolution of support is required from our Local Governing Body ensuring support for a one year extension for the Planning, Design, Construction, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to Mountain View Drive from Grand Avenue to 7th Street.

XIV. BUSINESS ITEMS

1. Conduct a Public Hearing and Approval/Disapproval to adopt Ordinance #18-07, amendment to the Official Zoning Map for property.

   Maria Perea, Planning & Zoning Coordinator Mr. Gilberto Juan Lorenzo Martinez, Owner of a 0.10 acres +/- within Block M, of the Town, now City of Las Vegas, and known as 338 Santa Ana Street, Las Vegas, New Mexico appeared before the Las Vegas Planning and Zoning Commission on October 29, 2018. Mr. Martinez is requesting that said property be re-zoned from the present R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone). The applicant's intent is to lease the property to a healthcare cooperative to provide medical care within a "home" like setting. The cooperative consists of a midwife, a therapist and an acupuncturist.

2. Approval/Disapproval of International Association of Fire Fighters (IAFF) Local 4625 Agreement.

   IAFF Management/Union The City entered into contract negotiations with IAFF for purposes of negotiating a new contract. The International Association of Fire Fighters Local 4625 has ratified and approved collective bargaining agreement between the City of Las Vegas and the Las Vegas NM Professional Fire Fighters Association.

3. Approval/Disapproval of The American Federation of State, County and Municipal Employees (AFSCME) Local 2851 Agreement.

   AFSCME Management/Union The City entered into contract negotiations with AFSCME for purposes of negotiating a new contract. The American Federation of State, County and Municipal Employees Local 2851 has ratified and approved collective bargaining agreement.

4. Approval/Disapproval for a salary increase of seventy-five cents ($0.75) to the regular hourly rate of pay for all non-bargaining unit employees, including part time employees with at least one year of continuous employment with the City, effective the first full pay period after Council's approval.

   Ann Marie Gallegos, Interim City Manager The City of Las Vegas has budgeted for the proposed salary increase. The proposed increase is commensurate with increases to AFSCME and IAFF employees.

5. Approval/Disapproval to publish Ordinance No. 18-08, an ordinance granting a franchise to Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC.

Casandra Fresquez, City Clerk The last cable franchise agreement approved by Council was in 1997. Attorney Danelle Smith has reviewed and approved the attached cable franchise agreement. Ms. Erin Muffoletto with Comcast will be present at meeting to answer questions regarding the proposed franchise agreement. If approved to publish, the ordinance will be brought to Council in December for a public hearing and adoption of the ordinance.

6. Approval/Disapproval of Resolution No. 18-46 Adopting the updated City of Las Vegas Meadow City Express-Zero Tolerance Substance Abuse Policy.

   Casandra Fresquez, City Clerk Meadow City Express is updating their current policy to reflect updated regulations required by the Federal Transit Administration (FTA) of the US Department of Transportation.

7. Approval/Disapproval of Resolution 18-49 Disposition of Obsolete, Worn-Out or Unusable Tangible Personal Property.

   Tana Vega, Interim Finance Director The City of Las Vegas is requesting review and approval of Resolution 18-49 Disposition of obsolete, worn-out or unusable tangible personal property.

8. Approval/Disapproval of Resolution 18-48 City of Las Vegas Internal Control Policy.

   Tana Vega, Interim Finance Director The City of Las Vegas is requesting review and approval of Resolution 18-48 City of Las Vegas Internal Control Policy.

9. Approval/Disapproval of Resolution 18-47 City of Las Vegas Housing Authority Accounting Policy.

   Tana Vega, Interim Finance Director The City of Las Vegas is requesting review and approval of Resolution 18-47 City of Las Vegas Housing Authority Accounting Policy.

XV. COUNCILORS' REPORTS

XVI. EXECUTIVE SESSION

THE COUNCIL MAY CONVENE INTO EXECUTIVE SESSION IF SUBJECT MATTER OF ISSUES ARE EXEMPT FROM THE OPEN MEETINGS REQUIREMENT UNDER § (H) OF THE OPEN MEETINGS ACT.

A. **Personnel matters, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978.**

B. **Matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978.**

C. **Matters pertaining to the discussion of the sale and acquisition of real property, as permitted by Section 10-15-1 (H) (8) of the Open Meetings Act, NMSA 1978.**

XVII. ADJOURN

ATTENTION PERSONS WITH DISABILITES: The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office prior to the meeting so that arrangements may be made.

ATTENTION PERSONS ATTENDING COUNCIL MEETING: By entering the City Chambers, you consent to photography, audio recording, video recording and its/their use for inclusion on the City of Las Vegas Web-site, and to be televised on Comcast.

NOTE: A final agenda will be posted 72 hours prior to the meeting. Copies of the Agenda may be obtained from City Hall, Office of the City Clerk, 1700 N. Grand Avenue, Las Vegas, NM 87701

MINUTES OF THE CITY OF LAS VEGAS CITY COUNCIL WORK SESSION MEETING HELD ON WEDNESDAY, OCTOBER 10, 2018 AT 5:30 P.M. IN THE CITY COUNCIL CHAMBERS

MAYOR: Tonita Gurulé-Girón

COUNCILORS: David G. Romero
Barbara A. Casey
Vincent Howell
David A. Ulibarri, Jr.

ALSO PRESENT: Ann Marie Gallegos, Interim City Manager
Casandra Fresquez, City Clerk
Esther Garduno Montoya, City Attorney
Kenneth Jenkins, Deputy Chief of Police

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE

Councilor Howell asked for a moment of silence to keep all of the residents in the State of Florida and on the East Coast that are being affected by the devastating hurricane Michael in their prayers.

APPROVAL OF AGENDA

Councilor Casey made a motion to approve the agenda as presented. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A. Ulibarri, Jr.	Yes	David G. Romero	Yes
Barbara Casey	Yes	Vincent Howell	Yes

City Clerk Fresquez re-read the motion and advised that the motion carried.

PUBLIC INPUT

Leo Maestas from the Office of Emergency Management spoke about a workshop for senior officials for all hazard preparedness. Mr. Maestas advised the workshop provides a forum for senior officials to understand strategic and executive level issues related to all hazard disaster preparedness.

Interim City Manager Ann Marie Gallegos advised it is a good workshop on what to do and how to proceed with emergencies.

Mr. Maestas advised the training would have an instructional workshop part and an exercise training based on an incident such as an active shooter or something having to do with the fiestas. Mr. Maestas advised there have been incidents where people are using cars to go through crowds.

Marshall Poole advised in September, the animal welfare coalition took in one hundred and seventy two animals, and one hundred and sixty four of those animals were unidentified. Mr. Poole advised they returned thirty nine animals to their owner or guardians, they adopted twenty nine animals locally and they trapped thirty seven cats and they were sent for spaying and neutering. Mr. Poole advised they transported fifty four animals to seven different agencies for adoption.

Mr. Poole advised they had zero bite holds in September. Mr. Poole advised they transported nineteen citizen owned dogs and cats at a low cost of twenty five dollars or no cost for spaying and neutering and also transported ten strays or owner surrendered animals for spay and neutering.

Mr. Poole advised they had an incident where one dog was abandoned and locked in a home for eight days without food or water and was in terrible condition. Mr. Poole advised the owner was cited by animal control and was found guilty in Municipal Court and had to pay fines for animal abandonment and neglect. Mr. Poole advised they may or may not be able to save the animal.

Discussion took place regarding the annual Art Bark fundraiser in November.

Lee Einer spoke about concerns regarding the newly appointed Police Chief. Mr. Einer advised the council might not have been apprised of an ongoing lawsuit or a past guilty plea for domestic assault regarding the Police Chief before they took their vote. Mr. Einer advised he was perplexed about that because a background check by law enforcement should at the minimum have that information but he believes full information was not shared with the council before they voted. Mr. Einer asked for the council to take a second look if there is a process problem that needs to be addressed and to support an external investigation that will either clear the Police Chief's reputation or protect the community.

Discussion Items

1. Department of Public Safety Grant for Las Vegas Police Department Street Crimes Unit for overtime, confidential funds and undercover vehicle maintenance .

Deputy Police Chief Kenneth Jenkins advised this grant is known as the Region grant or the JAG grant. Deputy Police Chief Jenkins advised the narcotics enforcement has not died in the community but they do share the responsibility with other counties. Deputy Police Chief Jenkins advised they got the funding after they changed the name to the Street Crimes Unit and focused on Las Vegas as a whole instead of focusing on other counties.

Councilor Howell asked how often does the regional task force give the governing body status reports.

Deputy Police Chief Jenkins advised their agency provides monthly reports in reference to narcotics, criminal investigations and calls for service.

Interim City Manager Ann Marie Gallegos advised the reports are part of their monthly progress reports that are submitted to her.

Discussion took place regarding a verbal progress report during council meetings.

Discussion took place regarding the goals set to reduce the drug problem in the community and those who are bringing in drugs.

Councilor Ulibarri, Jr., asked if the Street Crimes Unit was like the Region IV Taskforce.

Deputy Police Chief Jenkins advised yes, it is the same thing but they changed the name to the Street Crimes Unit and changed their focus only on Las Vegas.

Discussion and questions took place regarding the different counties not following through on their part.

Discussion and questions took place regarding citizens from the community willing to sit down with police officers and give their feedback on what they see going on in the community and presenting at schools.

The governing body agreed to place the item as a consent agenda item.

2. Resolution #18-42 request to continue support of the Amtrak Southwest Chief Passenger Service through Las Vegas, New Mexico.

Interim Community Development Director Virginia Marrujo advised Amtrak is keeping the Southwest Chief Passenger Service for another year and if approved, the resolution will show the support to the Southwest Chief to continue service through Las Vegas and throughout New Mexico.

Councilor Casey advised in the resolution under the 5th whereas states, the train is a key economic contributor to Las Vegas, New Mexico and Northern New Mexico, including the cities of Raton, Santa Fe, Lamy, history of the train in Las Vegas, NM, but the history of the train in Las Vegas, NM does not fit into the rest of the whereas sentence.

Councilor Casey advised moving it and making a new whereas to include whereas, the train also contributes greatly to the history and economic development of Las Vegas and other New Mexico communities or something to that effect.

Discussion took place regarding changing the whereas in the resolution.

Councilor Casey advised there was a typo on the last whereas on the second line, "Of" should have a little "o" instead of a big "O".

Councilor Romero asked where the direction came from to go through with the resolution.

Mayor Tonita Gurulé-Girón advised it was herself and she was contacted by a lot of people to put together a letter which she sent and then to adopt a resolution to support Amtrak.

Councilor Romero advised on July 11th he sent Mayor Tonita Gurulé-Girón through email requesting the same resolution.

Mayor Tonita Gurulé-Girón advised she had been sending letters for two years now and the resolution came after the fact and was waiting for other communities to put their resolutions through, and advised she's been working on the Amtrak issue for three years and two and a half years as Mayor and appreciates Councilor Romeros' input.

Discussion took place regarding how much time Mayor Tonita Gurulé-Girón and Interim Community Director Virginia Marrujo have spent working on the Amtrak issue.

Discussion and questions took place regarding the consistency within the resolution.

Discussion and questions took place regarding concerns about adding the investment of Mainstreet and Allan Affeldt instead of focusing on Amtrak.

Discussion took place regarding an additional whereas in the resolution to include the relation to the historic district in Las Vegas, New Mexico.

The governing body agreed to not place the item as a consent agenda item until the resolution is amended.

3. Award RFP #2019-02 to Animal Welfare Coalition of Northeastern New Mexico for animal services & shelter operations.

Interim Community Development Director Virginia Marrujo advised the only RFP submitted was the Animal Welfare Coalition of Northeastern New Mexico.

Discussion took place regarding the support for the Animal Welfare Coalition and their amazing work.

Councilor Howell suggested Mr. Poole should start a Capital fundraising initiative so they can see the tremendous amount of support they have.

Mayor Tonita Gurulé-Girón commended Mr. Poole and all the staff for taking the program and making it a great program and the professionalism they bring to the organization.

Discussion and questions took place regarding the skunk issue and the policy for the City of Las Vegas regarding skunks.

Councilor Romero requested an update in two months as to where they are with the skunk issue.

The governing body agreed to place the item as a consent agenda item.

4. Resolution No. 18-37 Abatement of nuisances located at 1309 6th Street.

Code Enforcement Officer Levy Lujan advised the property has several nuisances such as accumulation of solid waste, unsanitary premises, and hazard premises. Code Enforcement Officer Lujan advised neighbors are noticing insects and vermin coming from the property.

Discussion and questions took place regarding the red tags given to Robert Hanford Dalton due to the condition of his property.

Interim Community Development Director Virginia Marrujo advised she drove past the residence and noticed Mr. Dalton accumulated more than before.

Code Enforcement Officer Lujan advised Mr. Dalton had been cited into Municipal Court for those violations and has not done anything to correct them.

Councilor Casey thanked Code Enforcement Officer Lujan for the work that he has done and he is always responsive. Councilor Casey advised she has gotten a lot of complaints about the conditions of residence.

Mayor Tonita Gurulé-Girón advised she got a lot of calls as well about the residence and thanked Code Enforcement Officer Lujan and Interim Community Development Director Marrujo for helping as she knows they are short staffed.

Discussion and questions took place regarding how long Mr. Dalton has owned the property and if that was his home.

Discussion and questions took place regarding when the complaints came in and what type of communication was done after speaking to Mr. Dalton.

Councilor Ulibarri, Jr., commended Code Enforcement Officer Lujan on doing a good job.

Discussion and questions took place regarding Code Enforcement Officer Lujan going back to those residences that have been red tagged and still not in compliance with code enforcement.

Discussion and questions took place regarding how long a turn around for properties would be once fully staffed.

Discussion and questions took place regarding pending litigations with the property.

Discussion and questions took place regarding how code enforcement determines a property that is in violation.

Discussion and questions took place regarding who cleans out the acequias on 8th Street and the removal of rocks along the fence line at the Housing Authority.

The governing body agreed to place the item as a consent agenda item.

5. Resolution No. 18-41 assuring the availability of matching funds for the Plan and Design, Construction Management and Construction of the Municipal Airport SRE Building, for the storage of the Snow Removal Equipment as per FAA agreement. Total cost of the project = $89,100.00, State match = $81,000.00, City share = $8,100.00.

Interim Public Works Director Danny Gurule advised according to FAA they need to store the Snow Removal Equipment when it is not in use. Interim Public Works Director Gurule advised they would have to extend the building to fit the size of the equipment.

Interim City Manager Ann Marie Gallegos advised the funding is from a grant from the FAA organization.

Councilor Romero asked if the bidding process will be handled by the City of Las Vegas or the FAA.

Interim Public Works Director Gurule advised once they get the approval then they will go out for bids.

Mayor Tonita Gurulé-Girón stated it is for planning and designing.

Councilor Howell asked if the snow removal equipment will be used by other departments.

Interim Public Works Director Gurule advised per FAA they can't and can only be used at the airport.

Councilor Howell asked if the planning and design will be done in a hangar.

Interim Public Works Director Danny Gurule advised, no they have a building but they need to extend the back because the equipment doesn't fit in it now.

Interim City Manager Gallegos advised the snow equipment is as wide as the runway.

Discussion took place regarding the approval of Mr.Billingsley getting a hangar at the airport.

The governing body agreed to place the item as a consent agenda item.

6. Resolution #18-43 Budget Adjustment Resolution.

Interim City Manager Ann Marie Gallegos asked for the governing body's permission to present on the behalf of Interim Finance Director Tana Vega.

Interim City Manager Gallegos advised this was the first budget adjustment resolution for the year and they amend their budgets to include all the different grants that have been funded to the City of Las Vegas after the September final budget.

Discussion took place regarding an increase to Lodgers Tax publications and advertising.

Discussion took place regarding an increase for the CLG grant to complete the Old City Hall renovations.

Discussion took place regarding the Legislative Appropriation for the Senior Center parking lot improvements.

Discussion took place regarding the 214 fund for the planning, design and construction for Mountain View Drive to Grand Avenue.

Discussion took place regarding the coop. projects for West National to South Pacific and the design for West National to South Keen Street to Southwest National.

Discussion took place regarding the awardment for the senior employment program.

Discussion took place regarding the loan proceeds for water storage at Storrie Lake.

Discussion took place regarding the debt service with the principal and interest included to New Mexico Finance Authority.

Discussion took place regarding the Federal Aviation lighting project for the Las Vegas Airport funded by FAA, the building modifications for the storage of the snow removal equipment and the awardment for general supplies and materials.

Discussion took place regarding the total of expenditures and revenues.

Councilor Howell asked who worked on all the aviation grants.

Interim City Manager Gallegos advised FAA does inspections at the airport and recommends different projects.

Discussion and questions took place regarding the Lodgers Tax budget and their recommendation for the increase for publications and advertising.

Councilor Howell advised there are concerns about the November 6th Lodgers Tax meeting being on the same day as voting.

Interim Community Development Director Virginia Marrujo advised she will bring that up to the Lodgers Tax committee.

The governing body agreed to place the item as a consent agenda item.

EXECUTIVE SESSION

Councilor Casey made a motion to convene into executive session for the purpose of discussing both personnel matters, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978 and also for matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Yes

City Clerk Fresquez re-read the motion and advised that the motion carried.

Councilor Casey made a motion to reconvene into regular session after being in executive session to discuss personnel matters, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978 and to discuss matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978, no decisions were made during the executive session. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Vincent Howell	Yes
Barbara Casey	Yes	David A. Ulibarri, Jr.	Yes

City Clerk Fresquez re-read the motion and advised that the motion carried.

ADJOURN

Councilor Casey made a motion to adjourn. Councilor Howell and Councilor Ulibarri, Jr., both seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romerol	Yes	Barbara Casey	Yes
David A. Ulibarri, Jr.	Yes	Vincent Howell	Yes

City Clerk Fresquez re-read the motion and advised that the motion carried.

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Mayor Tonita Gurulé-Girón

ATTEST:

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Casandra Fresquez, City Clerk

MINUTES OF THE CITY OF LAS VEGAS CITY COUNCIL REGULAR MEETING HELD ON WEDNESDAY, OCTOBER 17, 2018 AT 6:00 P.M. IN THE CITY OF LAS VEGAS COUNCIL CHAMBERS

MAYOR:	Tonita Gurulé-Girón
COUNCILORS:	David G. Romero Vincent Howell David A. Ulibarri, Jr. Barbara A. Casey
ALSO PRESENT:	Ann Marie Gallegos, Interim City Manager Anna Gonzales, Recorder Esther Garduno Montoya, City Attorney Kenneth Jenkins, Sergeant at Arms

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE

Councilor Howell asked the Lord to hold within his arms, those who were cold and asked residents who were warm, to be generous and have concern for community members who were not as fortunate.

APPROVAL OF AGENDA

Councilor Casey made a motion to approve the agenda as is. Councilor Ulibarri, Jr. seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara A. Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Yes

Recorder Anna Gonzales re-read the motion and advised that the motion carried.

APPROVAL OF MINUTES

Councilor Casey made a motion to approve the meeting minutes for September 10th, September 12th Special, September 12th Work Session and September 19, 2018 as amended. Councilor Romero seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara A. Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Yes

Recorder Anna Gonzales re-read the motion and advised that the motion carried.

MAYOR'S APPOINTMENTS/REPORTS

Mayor Gurulé-Girón reported that she had been working diligently with the schools, along with Councilor Ulibarri, Jr. in regards to looking for housing for the homeless from the Samaritan House. She asked Council members to report on the status of their tasks regarding the Samaritan House.

Councilor Howell reported that he met with Pastor Saiz, who was very influential with other churches to discuss the issue regarding the Samaritan House. He advised they planned to meet with other Pastors, Ministers and the Samaritan House as well.

Councilor Ulibarri, Jr. reported he had been working with the churches, that he asked for assistance and that both churches would be coming together to help the Samaritan House.

Councilor Casey reported that she had been working with the Our Lady of Sorrows Church Council also with council member Martha Lopez regarding the need to locate temporary shelter for the Samaritan House until they can complete renovations or move in to the location purchased. She stated that Our Lady of Sorrows did not have adequate space to shelter the homeless although they would be making a generous donation to Samaritan House.

Councilor Romero reported he had been in discussion with several school board members and local businesses to help support the Samaritan House in the renovation of their building.

Mayor Gurulé-Girón reported she would be speaking at the City of Las Vegas School Board Meeting the following evening, in regards to assisting the Samaritan House. She asked Fire Chief Billy Montoya to report on the status of the permits and requirements in moving the Samaritan House forward and to find a way to expedite the process.

Fire Chief Billy Montoya reported he had been working diligently and closely with the New Mexico State Fire Marshal's Office, Mr. Gonzales with CID and Mr. Lyon. He advised they had performed an inspection and that the State Fire Marshal's Office and Mr. Gonzales would make the decision of issuing a temporary permit to the Samaritan House and added that it deviated from what the State Fire Marshal's Office usually practices although due to the conditions outside and the other building not being ready on time. He advised they were working with the City Manager regarding a backup plan which was looking into different facilities in the community.

Councilor Romero asked if transportation had been discussed and considered regarding the homeless.

Mayor Gurulé-Girón advised that Interim City Manager Gallegos was working on that as well.

Discussion took place regarding temporary fire suppression and fire watch issues.

Councilor Casey advised that she and Councilor Howell had attended the Samaritan House meeting the night before and they were surprised when they saw fliers that informed the possibility of Legion Park School becoming the temporary shelter. She advised they had not been informed that the Mayor was on the City School Board Meeting agenda and that they were not prepared to answer questions from several people. Councilor Casey commended City Manager Gallegos for the good job of addressing the issues that had been brought up and requested that in the future, if presentations were going to be made by the Mayor, that Council be notified so that they are apprised and ready to answer questions.

Mayor Gurulé-Girón advised that the City Manager knew about it and stated that she felt that she did not feel that she had to report it.

Councilor Casey advised that the reason of wanting to know of presentations by the Mayor, was due to the Mayor mentioning to City School Superintendent Cooper, that the City would be providing portable showers and other necessities for the shelter which would be an expenditure that would have to be approved by Council. She stated that Mr. Lyon was also not aware of the Mayor speaking before the school board and he was not prepared for the questions asked by the audience.

Interim City Manager Gallegos stated that hopefully the temporary permit would give the City time to work on many issues regarding the process of helping the Samaritan House and the City wanted to help them in any way.

Mayor Gurulé-Girón stated that the Council was aware of their directive and duties that had been discussed in executive session.

Discussion took place regarding the importance of working together in helping the Samaritan House.

Councilor Howell stated that the Governing Body needed to be apprised as to what the Mayor was doing and what was happening out in the community.

Councilor Ulibarri, Jr. stated he was happy about the Mayor presenting to the public at the City School Board meeting.

MAYOR'S RECOGNITIONS/PROCLAMATIONS

There were no recognitions/proclamations at this time.

PUBLIC INPUT

Las Vegas Police Department Lieutenant Michael Lopez spoke as President of the F.O.P and on behalf of the union members regarding the leadership needs of the Las Vegas Police Department. He advised that he personally was in support of Kenneth Jenkins being the next Las Vegas Chief of Police.

Jim Terr spoke briefly regarding his support of Deputy Chief Kenneth Jenkins as the Chief of Police for the Las Vegas Police Department.

Darin Romero spoke in regards to public safety in the community and of the many issues of the City of Las Vegas Police Department not having stable leadership.

Mayor Gurulé-Girón stated for the record that she was moving quickly on bringing in a Chief.

Darlene Baca spoke on several concerns regarding code enforcement issues on 6th and Friedman areas.

Mayor Gurulé-Girón advised that the City was addressing that issue and that Council would vote on the consent agenda which included the item regarding that specific property.

Wilbert Ryan spoke in support of appointing Deputy Chief Kenneth Jenkins as the Las Vegas Police Department Chief of Police.

PRESENTATIONS

Elmo Baca gave a detailed presentation regarding the Las Vegas New Mexico Community Foundation.

Questions were asked and brief discussion took place regarding appointing Community Foundation Community Advisory committee members. Mayor Gurulé-Girón recommended Councilor Howell and a Community Development staff member as part of the advisory committee.

Mayor Gurulé-Girón thanked Mr. Baca for the presentation and advised that if they brought back a viable proposal to the City in the future, they would review it for funding.

CITY MANAGER'S REPORT

Interim City Manager Gallegos reported on several projects that were taking place which included:

-OEM Training took place on Thursday, 10/11/18
-Sick Leave Bank Policy
-Code Enforcement (addressing 45 cases)
-Carnegie Library Elevator in operation
-New Phone System Testing-early November
-Film Industry-Utilizing the City of Las Vegas
-Date to review Utility Rate Assessment
-Upcoming presentations-Utilities Dept. (Utilities Rate Assessment/Peterson Dam)
-Franchise Agreement-Comcast Cable

-Job Descriptions-reviewed by HRganics
-Carbon Monoxide Program-Fire Dept.
-Recreation Center Water Slide-Installation
-Asset Management Plan-City Roads
-Seek Funding for Comprehensive Master Plan

Councilor Howell asked for an update regarding the recent Solid Waste issue.

Utilities Director Maria Gilvarry reported that one of the Solid Waste drivers was pushing trash on the floor up to the semis and pushed over a metal beam by having the front of the loader at the wrong angle. She advised they completed the procurement process, that it should be repaired by the end of the next business day and gave credit to her Solid Waste staff for coming up with a few alternatives regarding the trash pick up.

Discussion took place regarding procurement and emergency situations.

FINANCE REPORT

Interim Finance Director Tana Vega presented the Finance Report for the month ending September 30, 2018, reporting that the General Fund revenue was at 23% and expenditures were at 20%. She reported that Recreation Department revenue came in at 14% and expenditures were at 19%. Interim Finance Director Vega reported Enterprise Funds revenue came in at 21% and expenditures were at 20%.

Councilor Romero asked if members of the Finance Committee were provided detailed expenditure reports and if Council could be provided the report.

Interim City Manager Gallegos advised that a Reconciliation and a Board Expenditure Report could be provided to them.

Councilor Casey questioned the Recreation Department expenditures being 5% more than the revenues.

Interim Finance Director Vega explained that the increase of Recreation Department expenditures was due to the need of hiring additional staff for the Afterschool Program.

Councilor Howell asked for an update regarding increases in Gross Receipts Tax, Lodger's Tax and the Film Industry.

Interim Finance Director Vega advised there had been an increase of the GRT due to more construction taking place, roofing jobs, gasoline taxes (reported in the Street Improvement Fund) and also saw slight increases in the Lodger's Tax Fund from visitors and film staff.

Councilor Howell asked how the recent tariffs taking place had affected the City.

Brief discussion took place regarding some effects of the current tariffs in place.

Mayor Gurulé-Girón asked Ms. Vega when the Construction Industry Ratios were posted on the New Mexico Tax and Revenue website.

Interim Finance Director Vega advised that the ratios were posted monthly.

CONSENT AGENDA

Interim City Manager Gallegos read the Consent Agenda into record as follows:

1. Approval of Department of Public Safety Grant for Las Vegas Police Department Street Crimes Unit for overtime, confidential funds and Undercover vehicle maintenance.

2. Approval to award RFP #2019-02 to Animal Welfare Coalition of Northeastern New Mexico for animal services & shelter operations.

3. Approval of Resolution No. 18-37 Abatement of nuisances located at 1309 6th Street.

   Resolution 18-37 was presented as follows:

CITY OF LAS VEGAS
RESOLUTION NO. 18-37

A RESOLUTION DECLARING 1309 6TH STREET WHICH IS OWNED AND CONTROLLED BY ROBERT HANFORD DALTON TO BE DANGEROUS, COVERED WITH RUINS, RUBBISH, WRECKAGE AND DEBRIS AND A NUISANCE REQUIRING ABATEMENT

WHEREAS, pursuant to Section 3-18-5, NMSA, 1978, whenever any building or structure is ruined, or any premise is covered with ruins, rubbish wreckage or debris, the governing body of a municipality may by resolution find that the ruined, damaged and dilapidated

building, structure or premises is a menace to the public comfort, health, peace or safety and require the removal from the municipality the building, structure, ruins, rubbish, wreckage or debris; and

WHEREAS, the Las Vegas City Council has received evidence from the Community Development Department/Code Enforcement as to the condition of a parcel of land described herein, which are owned, occupied or controlled by Robert Hanford Dalton, whose address is 502 Baca Avenue, Las Vegas NM 87701., according to the records at the San Miguel County Assessor's Office and described in said records as "Harold and Reynolds Addition Lot 23-24 Block 3 (Parcel ID: 1-095-093-031-420.

WHEREAS, the property is a public nuisance and the premises are a menace to the public comfort, health, peace or safety of the community and is in violation of City of Las Vegas Ordinance 301 Sections 6 Nuisance Declared; Unsanitary Premises (B); Hazardous Premises (C); Accumulation of Solid Waste (D); Dangerous/Unsafe Buildings or Structures (H). Items stored on the premises and visible from the public right of way in violations of City ordinances include but are not limited to boards, tires, plastic, metal, couches, construction cones, ropes, cables, couches, computer chairs, and other items that are not clearly visible.

WHEREAS, the City sent certified mail to the property owner noted above. Certified Mail was returned unclaimed. Notices were also hand delivered to the property owner Robert Hanford Dalton.

WHEREAS, proper notices served upon certified mail and on the property included: a Notice of Violation on April 16, 2018; a Red Tag Notice of Violation on June 20, 2018; a Notice of Pending Abatement on July 26, 2018. In the face of these notices, the nuisances remain and continue to pose a hazard to health, welfare, and safety of the public. Notices and Red Tags allowed for a Total of 119 days to correct the violations noted above.

NOW, THEREFORE, the City Council, the governing body of the City of Las Vegas, New Mexico does hereby resolve:

A. That the above described parcel of land is a nuisance pursuant to Section 3-18-5, NMSA, 1978, is a menace to the public comfort, health, peace or safety and requires abatement as follows: All solid waste, rubbish and debris as described above and any other materials in violation of the Ordinance described above shall be removed from the property and properly disposed of.

B. The City shall serve a copy of this resolution on the owner, occupant or agent, including Robert Hanford Dalton, in charge of the premises as shown by the records of the County Assessors. If the owner occupant or agent in charge of the building, structure or premises cannot be served within the municipality, a copy of the resolution shall be posted on the building, structure or premises and a copy of the resolution shall be published one time.

C. Thereafter, and within ten (10) days after receipt of a copy of this resolution or of the posting and publishing of a copy of the resolution, the owner occupant or agent, in charge of the building, structure or premises shall commence removing the ruins, rubbish, wreckage and debris or file a written objection with the Municipal Clerk asking for a hearing before the governing body of the City of Las Vegas. .

D. That if a written objection is filed, the Governing Body shall follow the provisions as set forth of 3-18-5 D. NMSA 1978; fix a date for a hearing in its resolution and objection; consider all evidence for and against the removal resolution at the hearing; and determine if its resolution should be enforced or rescinded.

E. Any person aggrieved by the determination of the governing body may appeal to the district court by: giving notice of appeal to the governing body within 5 days after the determination made by the governing body; filing a petition in the district court within twenty days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

F. If the owner occupant or agent in charge of the building, structure or premises fails to commence removing the ruins, rubbish wreckage and debris as provided under NMSA 3-18-5 F, the municipality may remove ruins, rubbish wreckage and debris at the cost and expense of the owner. The reasonable cost of removal shall constitute a lien against the building, structure, ruins, rubbish wreckage and debris so removed and against the lots or parcels of land from which it was removed. The lien shall be foreclosed in the manner provided in sections 3-36-1 through 3-36-6 NMSA 1978.

G. The municipality may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.

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

PASSED, APPROVED AND ADOPTED THIS _____DAY OF_____2018

_____

Tonita Gurulé-Girón, Mayor

ATTEST:

_____

Cassandra Fresquez, City Clerk

REVIEWED AND APPROVED BY:

_____

Esther Garduno-Montoya, City Attorney

4. Approval of Resolution No. 18-41 assuring the availability of matching funds for the Plan and Design, Construction Management and Construction of the Municipal Airport SRE Building, for the storage of the Snow Removal Equipment as per FAA agreement. Total cost of the project = $89,100.00, State Match = $81,000.00, City Share = $8,100.00.

   Resolution 18-41 was presented as follows:

CITY OF LAS VEGAS
RESOLUTION NO. 18-41

A resolution supporting the New Mexico Department of Transportation Aviation Division, Project No. (LVS-19-01), for the Plan and Design Construction Management of the Las Vegas Municipal Airport SRE Building Modifications.

WHEREAS, the total cost of the project is $89,100.00. State share is 90%, which is $81,000.00 and City match is 10%, which is $8,100.00 and;

WHEREAS, the City of Las Vegas Governing Body has declared modifications that are needed to the SRE building as per FAA agreement for sheltering of Snow Removal Equipment and;

WHEREAS, the City of Las Vegas will work in accordance with the funding requirements of the NMDOT Aviation Division, Project No. (LVS-19-01) and has budgeted $8,100.00, which is 10% of the total project cost.

NOW, THEREFORE, BE IT RESOLVED by the local governing body of the City of Las Vegas, that the NMDOT Aviation Division Agreement for the above funding, be submitted to the NMDOT Aviation Division.

PASSED, APPROVED, AND ADOPTED this _____day of October, 2018.

CITY OF LAS VEGAS

_____

TONITA GURULE-GIRON
Mayor

ATTEST:

_____

CASANDRA FRESQUEZ,
CITY CLERK

5. Approval of Resolution #18-43 Budget Adjustment Resolution.

Resolution 18-43 was presented as follows:

STATE OF NEW MEXICO
MUNICIPALITY OF CITY OF LAS VEGAS
RESOLUTION 18-43
FISCAL YEAR 2018-2019
BUDGET ADJUSTMENT REQUEST

WHEREAS, The Governing Body in and for the Municipality of Las Vegas, State of New Mexico has developed a budget adjustment request for fiscal year 2018-2019; and

WHEREAS, said budget adjustment request was developed on the basis of need and through cooperation with all user departments, elected officials and other department supervisors, please see attached schedule; and

WHEREAS, the City of Las Vegas is in need of making budget adjustments in the 2018-2019 fiscal year budget; to include an increase of $60,000 in Lodgers Tax, $24,999 CLG Grant funding, $111,959 - Senior Ctr. Legislative Appropriation, $573,506 in Coop. Projects, $4,090,681 NMFA Loan Proceeds, and $378,239 in Aviation Grant Funding.

WHEREAS, it is the majority opinion of this governing body that the budget adjustment request is approved and meets the requirements as currently determined for fiscal year 2018-2019;

NOW, THEREFORE BE IT RESOLVED, that the Governing Body of the Municipality of the City of Las Vegas, State of New Mexico hereby approves the budget adjustment request herein above described and respectfully requests approval from the Local Governing Division of the Department of Finance and Administration.

RESOLVED: In session this 17th day of October, 2018.

_____
Tonita Gurule-Giron, Mayor

ATTEST:

_____
Casandra Fresquez, City Clerk

REVIEWED AND APPROVED AS TO LEGAL SUFFICIENCY ONLY:

_____
Esther Garduno Montoya, City Attorney

Councilor Casey made a motion to approve the Consent Agenda as read into the record. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara A. Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Yes

Recorder Anna Gonzales re-read the motion and advised that the motion carried.

BUSINESS ITEMS

1. Approval/Disapproval of Resolution #18-42 request to continue support of the Amtrak Southwest Chief Passenger Service through Las Vegas, New Mexico.

Interim Community Development Director Virginia Marrujo advised that the City of Las Vegas was requesting the approval to continue support of Amtrak passenger services as the Southwest Chief which is currently in jeopardy of continuing the service through New Mexico, specifically through Raton, Las Vegas and Lamy.

Councilor Howell made a motion to approve of Resolution 18-42 request to continue support of the Amtrak Southwest Chief Passenger Service through Las Vegas, New Mexico. Councilor Casey seconded the motion.

Resolution 18-42 was presented as follows:

CITY OF LAS VEGAS
CITY COUNCIL
RESOLUTION NO. 18-42

A RESOLUTION ENDORSING EFFORTS TO CONTINUE SUPPORT OF THE AMTRAK SOUTHWEST CHIEF PASSENGER SERVICE THROUGH LAS VEGAS, NEW MEXICO

WHEREAS, Amtrak's Southwest Chief serves Northern New Mexico on its long distance route between Chicago, IL and Los Angeles, CA on the host railroad line of Burlington Northern Santa Fe;

WHEREAS, the Train Depot was built in the late 1800's and designed in the Spanish Mission Style and renovated in 2000 with $1.2 million secured federal, state and private sources;

WHEREAS, eastbound and westbound trains stop at Las Vegas daily and served more than 4,487 New Mexico passengers in 2017;

WHEREAS, Amtrak provides a transportation link to the residents of northern New Mexico that is of growing importance and will likely become critical as rising energy prices curtail the attractiveness of driving and flying;

WHEREAS, the train is a key economic contributor to Las Vegas, New Mexico and Northern New Mexico, including the cities of Raton, Santa Fe, and Lamy;

WHEREAS, railway freight traffic has declined, thereby reducing monies customarily set aside for rail maintenance and consequently forcing travel at lower speeds;

WHEREAS, it has been estimated that the rail traversed by the Southwest Chief is in immediate need of more than $100 million in rail repairs in three states, including New Mexico, in order to resume normal speeds;

WHEREAS, it has been further projected that rail repairs over the course of the entire rail will total $300 million over the next ten years;

WHEREAS, Amtrak is unable to make said repairs given current fiscal conditions;

WHEREAS, the route of the Southwest Chief through Raton, Las Vegas, Lamy (Santa Fe) and Albuquerque is threatened by an alternative route under consideration that would reroute the train south from Newton, Kansas through the Texas Panhandle to New Mexico west of Albuquerque, bypassing Las Vegas;

WHEREAS, the Southwest Chief is of the utmost importance to the City of Las Vegas as community members, business owners, homeowners, and city government are investing in the revitalization of the Historic Railroad District;

WHEREAS, the Southwest Chief is important to the increase of historical tourism as the City of Las Vegas consists of over 900 buildings on the National Historic Registry;

WHEREAS, the Southwest Chief serves as one of three forms of transportation in and out of Las Vegas;

NOW THEREFORE, BE IT RESOLVED, THE MAYOR AND CITY COUNCIL OF THE CITY OF LAS VEGAS, to call upon the Governor of the State of New Mexico, members of the legislature of the State of New Mexico, and the congressional delegation of the State of New Mexico to strongly endorse continuation of Amtrak's current Southwest Chief route through Northern New Mexico.

PASSED, APPROVED AND ADOPTED THIS _____DAY OF _____, 2018.

_____
Tonita Gurulé-Girón, Mayor

ATTEST:

_____
Casandra Fresquez, City Clerk

REVIEWED AND APPROVED BY:

_____
Esther Garduño-Montoya, City Attorney

Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara A. Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Yes

Recorder Anna Gonzales re-read the motion and advised that the motion carried.

COUNCILORS' REPORTS

Councilor Romero asked for an update regarding Tilden Avenue and about the debris at the Housing Department.

Interim City Manager Gallegos advised that Code Enforcement Officer Lujan would be checking with the property owner on Tilden and stated she would get back to Council with a current update. Regarding the debris at the Housing, she stated that Housing Department was waiting on their new budget to try and clean the area and added she would get a current update in the morning.

Councilor Romero asked when the Governing Body Rules and Procedure would be reviewed by City Attorney Esther Garduno Montoya.

City Attorney Garduno Montoya stated that there were a couple of issues regarding the Governing Body Rules & Procedures and the City Charter, and understood that direction had been given to review both. She advised that there had been changes that had not been incorporated in the copies that she had and the Charter Committee had not met in a long time.

City Attorney Garduno Montoya advised that after reviewing some Charter Committee meeting minutes, understood that several board members had quit and that her intent was to send letters to Charter Committee members asking if their intent was to remain on the board or to resign. She stated that she wanted to make sure appointments were made, work towards reviewing and getting started with the Charter.

Mayor Gurulé-Girón advised that she was not certain if members quit or the Charter Committee dismantled, she thanked City Attorney Garduno Montoya for following up with the matter.

Councilor Romero advised City Attorney Garduno Montoya that regarding the Governing Body Rules & Procedures, one of the biggest issues was Council members getting items on the agenda and that in his opinion, it should only take two members of Council to request an item to be placed on the agenda or could be voted down by the majority. He stated that that was a change he would like to see.

Mayor Gurulé-Girón stated that they recently had adopted a resolution and advised that the City Attorney review the resolution that they had presented for the consensus.

Councilor Romero advised that the resolution could be changed and would like to see it changed by this Governing body. He stated that he felt he did not have a voice when he requested to put items on the agenda and could not and that eliminated the voices of the people from his ward. Councilor Romero stated that it was not fair that he could not represent them and would continue to request items to placed on the agenda.

Councilor Romero asked if the treadmills at the Recreation Center were being repaired and was concerned about the shortage of employees there.

Recreation Manager Sonia Gomez advised that they were in the process of the treadmills being repaired and also in hiring more staff.

Councilor Casey spoke of concerns regarding the Governing Body Rules & Procedures and it being in disarray and was glad that the City Attorney would be reviewing it.

Councilor Casey asked City Manager Gallegos if they could address the issues on Garfield Street. She also stated that she hoped that this year for Las Vegas Night at the Legislature, something different could be tried in regards to getting Legislators there so that they can lobby them for the needs of the City.

Interim Community Development Director Virginia Marrujo explained that last year they were scheduled at the time they were presenting the 100th Bill Celebration and informed that it had been scheduled this year for February 28, 2019, during "Higher Education Day".

Councilor Casey thanked all the City staff for all their hard work and their willingness to do whatever it takes to serve the community.

Councilor Howell advised that after speaking to the property owner on Collins Street across the Housing Authority regarding weeds, the owner would be addressing the issue.

Councilor Howell stated that his concern of skunks was very serious and informed that he believed that either the USDA or Wildlife Refuge offered a grant to address that issue and recommended that a representative from either organization come speak and share information on how to address the skunk issue.

Interim City Manager Gallegos advised that Code Enforcement was working on receiving training and information to bring back to Council regarding the issue. She stated she would look into bringing in a representative from USDA or Wildlife Refuge to present to Council and would do research on the grant.

Councilor Howell stated that he looked forward for Ms. Daves to speak in the future.

Councilor Ulibarri, Jr. asked that Public Works department address the overgrown weeds on Salazar, Romero and Santa Ana Streets, due to the overgrowth blocking the view of stop signs.

Brief discussion took place regarding other stop sign issues, street lights and a possible traffic study.

Councilor Romero thanked Deputy Chief Jenkins for taking on the responsibilities at the Police Department along with the rest of the Command staff.

Mayor Gurulé-Girón explained that there were issues of neighbors and property maintenance at Garfield Street and stated they needed to give direction to the City Attorney to vacate although needed a full consensus from the Governing Body in order to move forward. All of the Governing Body agreed to move forward regarding the Garfield Street vacate.

EXECUTIVE SESSION

There was no need for Executive Session at this time.

ADJOURN

Councilor Romero made a motion to adjourn. Councilor Casey seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara A. Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Yes

Recorder Anna Gonzales re-read the motion and advised that the motion carried.

_____

Mayor Tonita Gurulé-Girón

ATTEST:

_____

Casandra Fresquez, City Clerk

Regular

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/01/2018 DEPT: Executive MEETING DATE: 11/~~14~~20/2018

ITEM/TOPIC: ***Presentation by Leo Maestas on the Mass Casualty Plan***

ACTION REQUESTED OF COUNCIL: ***No Action***

BACKGROUND/RATIONALE:

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULÉ-GIRÓN
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)

ANN MARIE GALLEGOS

INTERIM CITY MANAGER

ESTHER GARDUNO MONTOYA
CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES AND RESOLUTIONS MUST BE REVIEWED)

Board of County Commissioners

Chris A. Najar
Chairman- -District 5

Janice C. Varela
Vice-Chair –District 2

Rock G. Ulibarri
Commissioner-District 1

Arthur J. Padilla
Commissioner-District 3

Maria L. Martinez
Commissioner -District 4

Vidal Martinez Ed.D.
County Manager

SAN MIGUEL COUNTY
RESOLUTION NO. 10-09-18-SMC/CLV-MCI

A RESOLUTION APPROVING PARTICIPATION IN THE MASS CASUALTY INCIDENT PLANNING PROCESS AND ADOPTION OF THE SAN MIGUEL COUNTY/CITY OF LAS VEGAS MASS CASUALTY INCIDENT PLAN

WHEREAS, the San Miguel County Government desires to prepare and mitigate for such hazards and seeks to promote the public health, and general welfare of the jurisdiction and the safe, orderly and healthful development of the jurisdiction, and

WHEREAS, the San Miguel County Government worked with local stakeholders and other participating jurisdictions to develop a Mass Casualty Incident Plan; and,

WHEREAS, the New Mexico Department of Health and Emergency Preparedness supports Local Mass Casualty Incident Planning and encourages local government to participate in the jurisdiction Mass Casualty Incident Planning process; and

WHEREAS, staff recommends that the San Miguel County Government approve the Mass Casualty Incident Plan; and

WHEREAS, the San Miguel County Government deems it in the public interest to approve this plan; and

NOW THEREFORE, BE IT RESOLVED, by the San Miguel County Government that this plan be approved.

County of San Miguel
State of New Mexico

SAN MIGUEL COUNTY
Pages: 3

I Hereby Certify that this Instrument was filed for record 10/23/2018 09:23:46 AM and was duly recorded as Instrument No. 201803564 of the Records of San Miguel County, NM.

Witness My Hand and Seal Of Office
Geraldine E. Gutierrez

Deputy _____

County Clerk, San Miguel, NM

Administrative Building
500 W. National Ave., Suite 201 Las Vegas, New Mexico 87701 (505) 425-9333 phone (505) 425-7019 fax

MOVED, SECONDED AND ADOPTED this 9th day of October, 2018 by the **BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO.**

Chris A. Najar, Chairman

Janice C. Varela, Vice-Chair

Arthur J. Padilla, Member

Maria L. Martinez, Member

Rock G. Ulibarri , Member

Vidal Martinez, Ed.D. County Manager

ATTEST:

Geraldine E. Gutierrez by [illegible]
Geraldine E. Gutierrez
San Miguel County Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

David Romero, Jr.
David Romero Jr.
San Miguel County Attorney

SMC Resolution No. 10-09-18-SMC/CLV

City of Las Vegas:

_____

Ann Marie Gallegos, Interim City Manager

Contractor:

_____

ATTEST:

_____

Casandra Fresquez, City Clerk

Approved as to Legal Sufficiency Only:

_____

Esther Gardunio-Montoya, City Attorney

SAN MIGUEL COUNTY

City Of Las Vegas

EST. 1844

MCI

STATE OF NEW MEXICO

MASS CASUALTY PLAN

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MASS CASUALTY INCIDENT (MCI)

1.0 Purpose

First responders are tasked with the protection of property and life safety. In the event of a disaster, whether natural or the result of a man made event, the immediate response to that incident will be by first responders.

Boundaries dividing fire departments and fire districts may determine the initial agency having authority. Mutual aid and first response agreements allow for the immediate resources of additional staffing and equipment.

In the event of a major incident, the demand for an orchestrated plan allowing coordination of multiple agencies will facilitate resolving that incident safely and efficiently.

The purpose of a county wide adopted plan for mass casualty incidents is to achieve overall understanding of personnel assisting neighboring departments. In addition, with a coordinated county plan the use of common terminology and systematic delivery to a MCI will integrate the immediate involvement of mutual aid, strike teams, and task forces when requested by incident commanders.

The City of Las Vegas Mass Casualty Incident Plan (MCI Plan) will append the San Miguel County Office of Emergency Management's Emergency Support Function (ESF) and hospitals' disaster plans. Training and education of all organizations, providers and agencies that may be involved in a disaster/MCI will prepare agencies or responders for the day when this plan is required to become operational.

2.0 Policy

2.1 It shall be the policy when confronted with any (MCI) mass casualty incident to save the greatest possible number of patients from death or serious injury. This is accomplished by prompt triage, appropriate treatment, and prioritized patient transportation to designated medical facilities.

At any given time, the on scene incident commander may, by assessing the current conditions of the emergency, declare a Mass Casualty Incident. For any MCI or (5) patients of any severity, Alta Vista Hospital shall be notified to determine patient destination facilities. Alta Vista can always be used for multiple patient incidents of any number to determine patient destination.

3.0 *Definitions*

3.1 Rescue UNIT: Designated title to identify a fire based basic life support unit.

3.2 AMBULANCE: Designated title to identify private companies requested to assist in the transport of patients to hospitals. Unit may be ALS or BLS.

3.3 ASSEMBLY AREA: Identified location where resources (i.e. ambulances, strike teams, personnel, busses, etc.) to support multiple jurisdictional requests or large-scale incidents report prior to being assigned.

3.4 BASE STATION: Base stations provide on-line medical direction for patient care.

3.5 COMMAND POST: (Unified Command Post) The position where agencies will function on site to support the Incident Commander. The command post located at one location for all agencies.

3.6 Alta Vista Hospital: The hospital designated to coordinate patient transport destination.

3.7 EMS (Emergency Medical Service): A system designed to provide care to sick and injured people. Using standard operational guidelines, protocols, and laws.

3.8 FUNNEL POINT: A center point designated by the Triage Team Leader that every patient filters through prior to movement into the Treatment area. (This location usually is located at the entrance to the treatment area.) Patients will be numbered for tracking and receive a triage ribbon if they have not yet done so.

3.9 Medical 5 Repeater (Hospital Emergency Radio): This system can be used to communicate from mobile-to-hospital and hospital-to-hospital.

3.10 HAZMAT GROUP SUPERVISOR: Will be in charge of hazmat group as needed. Reports to the Operations Section Chief.

3.11 ICS: Incident Command System shall be implemented for the purpose of establishing an operational structure. The San Miguel County has adopted Incident Management System (NIMS) as the command system for San Miguel County.

3.12 INCIDENT COMMAND: The on scene Incident Command officer that will be responsible for the overall orchestration of the emergency incident.

3.13 LITTER BEARERS: Individuals assigned by the Medical Group Supervisor to assist in movement of injured patients to designated triage areas, treatment, transport areas.

3.14 MAJOR MCI: >10 patients.

3.15 MEDIC UNIT: Designated title to identify a fire based advanced life support / paramedic unit.

3.16 MEDICAL GROUP SUPERVISOR: Will be in charge of medical group and medical operations at a large incident. This position is assigned by the Operations Section Chief or the Incident Commander if Operations Section Chief has not been assigned. The Medical Group Supervisor would report to the Incident Commander if no Operations Chief is assigned. Reports to the Operations Section Chief.

3.17 OPERATIONS SECTION CHIEF: Will be in charge of operations as assigned by the Incident Commander. This could be Medical operations, Hazmat operations, Rescue operations, Suppression operations and Extraction operations depending on the size and complexity of the incident. Reports to the Incident Commander.

3.18 OVERHEAD TEAM: A designated team of Chief Officers dispatched at the request of the Incident Commander to assist in management of the incident.

3.19 PUSH PACK: Part of the National Pharmaceutical Stockpile. Available for large-scale terrorism or mass outbreak, available through New Mexico.

3.20 REHABILITATION AREAS: The area for rescue personnel to be assessed, treated and cared for. Rescue personnel will be evaluated, nourished and rested in the rehab area.

3.21 RESCUE GROUP SUPERVISOR: Will be in charge of the rescue group as needed. Reports to the Operations Section Chief.

3.22 STAFFING/PERSONNEL AREA: An area designated by the Incident Commander, or designee for assembly of available staff for the incident prior to assignment. Use of citizen volunteers will be at the digression of the Incident Commander.

3.23 STAGING AREA MANAGER: Individual assigned to coordinate the movement of arriving units and resources. Deployment of resources will be assigned by the Incident Commander or designee. Staging area manager shall ensure all transport units have immediate egress.

3.24 STAGING AREA: A designated area where vehicles will be parked until requested by the Incident Commander. All units responding to the incident shall report to staging until assigned by the Incident Commander.

3.25 SUPPLY UNIT: An area designated by the Incident Commander for the gathering of equipment such as backboards, trauma kits, oxygen etc.

3.26 TAC ONE: Mobile communications unit available through OEM to act as the Command Post for IC, planning and logistics.

3.27 TRANSPORT AREA: An area patient is moved following treatment as they await transport to a medical facility.

3.28 TRANSPORT UNIT LEADER: Will organize and supervise the transportation of all patients to medical facilities. Coordinates patient transportation destinations with Alta Vista. Reports to the Medical Group Supervisor.

3.29 TREATMENT AREA: An area specified by the Incident Commander or Operations Section Chief/Medical Group Supervisor for the treatment of patients.

3.30 TREATMENT TAG: A tag that will be affixed to each patient in the Treatment area. The patient's number, and outline of their injuries and each set of vital signs that are taken shall be documented on the tag. This form will accompany the patient to the designated receiving medical facility.

3.31 TREATMENT UNIT LEADER: Will organize and supervise the treatment area. Reports to the Medical Group Supervisor.

3.32 TRIAGE AREA: Designated area where the patients are sorted. This may be the area where the patients are initially found, or a designated point to where the patients are transported for appropriate sorting.

3.33 TRIAGE TAPE: Red, Yellow, Green, or Black colored surveyors tape is used to medically prioritize each patient. A piece of this tape will be affixed/tied to each patient prior to movement into the treatment area.

3.34 TRIAGE UNIT LEADER: Will organize and supervise the triage area. Reports to the Medical Group Supervisor.

3.35 TRIAGE: A categorization system used to medically prioritize/sort patients.

3.36 WHITE TRIAGE TAPE will be used in the event of a hazardous material or chemical incident. White tape will identify patients that **have** been decontaminated. **Decontaminating patients prior to transport shall be considered standard operation**. White tape will only be used when a hazardous material or chemical is involved in the incident.

4.0 Organizations Affected

4.1 Fire Departments are the first responders to emergency incidents. Unified command and on scene emergency operations will be the responsibility of local fire service jurisdiction.

4.2 Private ambulance services may be required to provide transportation of injured victims to receiving centers. In certain situations, personnel from private ambulance companies may be requested to assist with initial scene management as directed by the Incident Commander.

4.3 Law enforcement will be tasked with overall scene security and evacuation. They should have a representative at the command post.

4.4 Alta Vista will assume the responsibility of providing coordination among hospitals in the event of a disaster. They will also determine destination of patients being transported to hospitals. Christus St. Vincent Regional Medical Center and University of New Mexico Hospital are the backup facilities.

4.5 Receiving centers will provide the NMDOH with information for a countywide bed count and operational capability of their respective hospital. This information will be collected by the Alta Vista Hospital. All receiving centers will remain in a readied status until declaration to terminate the incident is made by Alta Vista Hospital.

4.6 San Miguel County Health Department is the lead agency for the coordination of public health services. NMDOH will assist by providing guidance to political jurisdictions, agencies and individuals.

4.7 San Miguel County Office of Emergency Management (OEM) may provide resource coordination for the incident as requested. This may include activation of the Emergency Operations Center (EOC).

4.8 NM Office of Medical Examiner's office is the lead agency for activities concerning the deceased including temporary morgue, identification, and disposition of the deceased.

4.9 The Federal Bureau of Investigation (FBI) may assume identification responsibilities in incidents involving interstate commercial carriers, hostage situations or citizens killed in the acts of terrorism. For terrorist events the FBI will have the responsibility for investigation and security.

4.10 New Mexico State Police will coordinate and interact with affected families, assisting relatives and friends, providing support and comfort.

4.11 American Red Cross may assist in the notification, relocation, temporary housing for affected persons, and scene support to emergency workers.

5.0 Standard Operating Procedures

5.1 Department Standard Operating Procedures should include within the respective tactical operations, a plan in the event of a Mass Casualty Incident or disaster situation, response guidelines to assist in the mitigation of such emergencies.

5.2 Simple Triage and Rapid Transport (START) will be the standard for prehospital sorting of injured patients.

6.0 Responsibilities

The first arriving company must be alert to include incident size up, estimated number of patients and initiate action to set up a MCI scene, call for assistance, and notify the Incident Commander of all pertinent incident information (i.e. HazMat, hazards, etc.). On scene operations will be structured under the incident command system.

6.1 INCIDENT COMMAND: (radio call sign "COMMAND") The Incident Commander will assume overall scene operations pertaining to the emergency incident. Unified command, communications, resources, authority, and tactical plans will be established through "COMMAND".

6.2 OPERATIONS SECTION CHIEF: (radio call sign "OPERATIONS") Assigned by Command. Operations, if assigned by command, will be responsible for all operations at the scene of an incident. May assign Groups or Divisions as need. Reports to COMMAND.

6.3 MEDICAL GROUP SUPERVISOR: (radio call sign "MEDICAL") Assigned by Operations as needed. The Medical Group Supervisor will be in control of medical triage, treatment and transport. Medical will contact Alta Vista to declare the MCI, and request open protocols. Medical Group Supervisors will designate triage, treatment and transport areas, and request staffing from Command as needed. Medical will request and update Operations/Command regarding status and needs of medical group.

6.4 TRIAGE UNIT LEADER: (radio call sign "TRIAGE") TRIAGE will be assigned to the Medical Group Supervisor by Operations and will assist in establishing triage area(s) as designated. All patients shall enter the treatment area through triage. Patients will be evaluated using START triage system, numbered, and placed in the appropriate treatment or transport area. Reports to MEDICAL.

6.5 TREATMENT UNIT LEADER: (radio call "TREATMENT") TREATMENT will be assigned to the Medical Group Supervisor by Operations, and will be responsible for the treatment of patients. TREATMENT will set up treatment areas, equipment and prepare to receive triaged patients. Treatment tags will be completed for all patients and affixed/tied to the patient prior to transport. TREATMENT will request additional resources through Medical Group Supervisor /Operations. Reports to MEDICAL.

6.6 TRANSPORT UNIT LEADER: (radio call sign "TRANSPORT") TRANSPORT assigned by Operations, and will be responsible for the transfer of patients to receiving hospitals. TRANSPORT will identify access and egress routes, coordinate loading, transporting and registering of all patients. TRANSPORT will communicate with Alta Vista Hospital to determine patient destination, and coordinate transportation through the Treatment Team Leader. TRANSPORT will maintain records of patient number, name, destination and the transporting agency. Reports to MEDICAL.

6.7 SAFETY OFFICER: (radio call sign "SAFETY") Assignment of the safety officer by COMMAND will be made as soon as staffing allows. SAFETY will assume the authority to identify, mitigate and intercede in any portion of the incident, which is judged to be potential threat to the well being of incident scene operations. SAFETY will inform COMMAND immediately of any such situation and only allow affected operations to continue when the safety concern has been resolved. Reports to COMMAND.

6.8 STAGING AREA MANAGER: (radio call sign "STAGING") Assigned by COMMAND, the individual responsible for staging will assign companies to the operation as requested by Operations. STAGING will request additional resources through COMMAND as needed. Reports to OPERATIONS.

6.9 PLANS CHIEF: (radio call sign "Plans") Assigned by COMMAND, and will be responsible for planning the next operational period in a multi-operational event. The plans division will be responsible for creating an Incident Action Plan for the incident and upcoming operational event. The PLANS CHIEF may also assign a Situation Unit leader and a Resource Unit Leader to work in the planning Section. Reports to the INCIDENT COMMANDER.

7.0 Procedures

7.1 Activation of the MCI Plan

7.1.1 To activate the MCI plan, the officer in charge of the incident will contact NorthCom(New Mexico State Police Dispatch) and provide the following information:

1. Title or the Unit Number
2. Notification that a Mass Casualty Incident exists. (Note: NorthCom will then upgrade this to a MCI per departments request)
3. An estimated number of patients.
4. A level of response necessary to manage the incident.
5. Complicating circumstances (i.e. HazMat, safety hazards, etc.)

7.2 The Incident Commander shall be responsible for the following:

7.2.1 Firefighting tactics as needed.

7.2.2 Notify NorthCom/NMSP of the MCI (if this has not been done) and request an appropriate response to handle the incident.

7.2.1 Appoint an Operations Section Chief (as needed)

7.2.2 Appoint a Safety Officer (as needed)

7.2.3 Establishing a Safety Zone

7.2.4 Identify a Staging location and notify all incoming units via NorthCom/NMSP of the location. Assign a Staging Area Manager.

7.2.5 Secure access and egress routes into the area for EMS vehicles.

7.2.6 Coordinate operations through Unified Command with participating agencies.

(i.e.,NMSP,SMSO, LVPD,LVFD,FBI,Medical Examiner, Hazmat Teams and Health Department etc.)

7.2.7 Coordinate with San Miguel County OEM.

7.3 The Operations Section Chief position shall be filled by the most appropriate-qualified individual.

7.4 Medical Group Supervisor is in charge of all EMS operations as assigned by the Incident Commander. This position should be filled by an MSO.

7.4.1 Medical Group Supervisor shall size-up medical needs, estimate numbers and severity, and inform command.

7.4.1 Medical Group Supervisor shall notify Alta Vista Hospital of an MCI with the estimated number of patients and severity and request "open patient care protocols".

7.4.2 Medical Group Supervisor shall identify the location for the triage, treatment and transport areas, and shall request staffing for those areas through Operations/Command.

7.4.3 Medical Group Supervisor shall supervise the Treatment, Triage and Transport areas.

7.5 The TRIAGE TEAM LEADER shall be an EMT or Fire company Officer. Triage will report to Medical Group Supervisor.

7.5.1 TRIAGE will survey the incident scene, establish triage areas, funnel points and begin triaging patients according to their injuries at the scene or designated funnel points.

7.5.2 TRIAGE will number each patient with a permanent marking pen for tracking purposes and affix/tie triage ribbon (if not completed).

7.5.3 In larger MPI events, additional staff may be needed for field triaging. In events where more than one triage or funnel points exists, the primary funnel point will start numbering patients with the number one (1). The other triage or funnel points will start with the number 100; if a triage or funnel point is needed they will start numbering at 200, and so forth.

7.6 The TREATMENT TEAM LEADER shall be filled with a Paramedic or a Fire ground Company Officer.

7.6.1 TREATMENT will request personnel and coordinate patient care areas designated as Red, Yellow, and Green. In a major MPI, TREATMENT may need to assign additional personnel for each treatment section.

7.6.2 TREATMENT shall keep TRANSPORT advised to the number of patients, severity, and their availability to be transported.

7.6.3 TREATMENT shall request additional resources for the treatment through Medical Group/Operations.

7.6.4 TREATMENT shall assure each patient has a treatment tag that outlines injuries, records vital signs, and identifies patient's name (when possible).

7.6.5 If transport units are available, patients may be moved from the triage areas directly to waiting transport units for rapid transport to appropriate emergency departments and by-pass the treatment area.

7.7 The TRANSPORT TEAM LEADER shall be filled by a paramedic or fire ground Company Officer. TRANSPORT reports to Medical Group Sup/Operations. The TRANSPORT TEAM LEADER shall:

7.7.1 TRANSPORT shall coordinate loading, transporting, and registering of all patients.

7.7.2 TRANSPORT shall coordinate with TREATMENT for patients available for transport.

7.7.3 TRANSPORT will maintain radio communications with Alta Vista Hospital to determine patient receiving center destinations.

7.7.4 TRANSPORT will place an orange Trauma Triage tag on all transported patients for patient tracking

7.7.5 TRANSPORT shall maintain a record of each patient's identification, hospital destination, and transporting agency.

7.7.6 TRANSPORT shall request ambulances, equipment, and personnel as needed through the Base/Staging Manager.

7.8 Litter Bearers will move through the incident scene placing patients on backboards, stretchers, wheelchairs; and assist the walking wounded. They will assist in processing patients through the triage funnel point, and into appropriate designated treatment areas and transport areas. Litter bearers will be assigned to Medical Group Supervisor/Operations.

8.0 Communications

On scene radio communications will be kept to an absolute minimum. When possible, direct verbal contact, or runners will be used.

8.1. COMMAND shall be the person routinely communicating with the dispatch center.

8.2. All EMS communications on Medical 5 repeater will be limited to MEDICAL GROUP/OPERATIONS and TRANSPORT.

8.3. Transport ambulances will communicate to receiving hospitals on the Medical 5 repeater. Information pertaining to those patients will be made by TRANSPORT and Alta Vista Hospital.

8.4. Agency Cellular phones shall be used to reduce radio traffic.

9.0 Transportation

9.1. Ambulances will be used for patient transportation. First arriving Medic Units typically will be held at the scene for medical supplies and resources, but may be utilized for transports when needed.

9.1.1 Ambulance personnel being used for transportation will remain with their respective units at the Staging location until requested.

9.2. Aid Units may be utilized as needed for transportation of patients to hospitals.

9.3. Air transportation should be utilized when needed. Agencies requested should be informed as to the designated landing zone. The landing zone should be located as to not interfere with ongoing incident scene operations.

9.3.1. Landing zones need to be established with the designated personnel to assure safety and staffing to facilitate expeditious patient transferring.

9.4. Busses may be used to transfer multiple patients to area receiving centers as appropriate. These patients should have minor injuries and be accompanied by a medically qualified individual capable of maintaining medical treatment and evaluation as needed. Stretcher capable buses may be available through the military. (San Miguel County OEM may assist obtaining buses)

10.0 Deceased Persons

10.1. Deceased persons will be tagged, covered with a sheet or blanket and when possible, not moved for investigative reasons.

10.2. Command will coordinate with the Medical Examiner representative in arranging for temporary morgue facilities, refrigerated trailers and/or transportation.

11.0 Triage Tape, Treatment Tags, and Priority

11.1 Triage tape and treatment tags will be carried on all Command Units, Aid and Medic Units.

11.2 Triage tape should be used in the following incidents:

11.2.1 Anytime there are three or more seriously injured people.

11.2.2 When there are five or more injured at a scene.

11.3 Selection Criteria

11.3.1 **Immediate RED** – A patient who is breathing fast, greater than 30 times a minute.
Capillary refill greater than 2 seconds or does **not** have a palpable radial pulse.
Has an altered mental status, patient is not oriented to person, place, time, and/or unable to follow commands.

11.3.2 **Delayed YELLOW** - A patient who is breathing less than 30 times a minute.
Capillary refill less than 2 seconds or does have a palpable radial pulse.
Patient is able to follow simple commands but is injured and unable to walk.

11.3.3 **GREEN** Minor/Non-Injured – Any person who can initially walk away from accident to a designated triage or treatment areas. Patients that are triaged with minor injuries.

11.3.4 **BLACK STRIPED** Obvious Dead on Scene (DOS) – Patients who have obviously died or are expected to because of their injuries. A patient with no respirations.

11.3.5 **ALL WHITE** Additional tape used to signify the patient has been decontaminated in the event of a Hazardous Material event.

12.0 S-T-A-R-T

SIMPLE TRIAGE AND RAPID TRANSPORT

The START (Simple Triage And Rapid Transport) plan was developed for the use in prehospital Multiple Patient Incidents. The plan allows EMS personnel to survey a patient, and quickly make an initial assessment for treatment needs and priority transport to a receiving facility. It is extremely simple to learn and use in the field. Prehospital providers are taught how to perform ABC's of patient assessment care. The START plan follows the ABCD's, (referring to them as 'RPM') thereby making it rapid to perform. The START plan requires no special skills or specific patient diagnosis. This allows all levels of prehospital providers to effectively use it. It allows the immediate stabilization of life threatening airway and bleeding problems, and most important it is very easy to learn, retain and recall.

The START PLAN uses three (3) criteria to categorize patients:

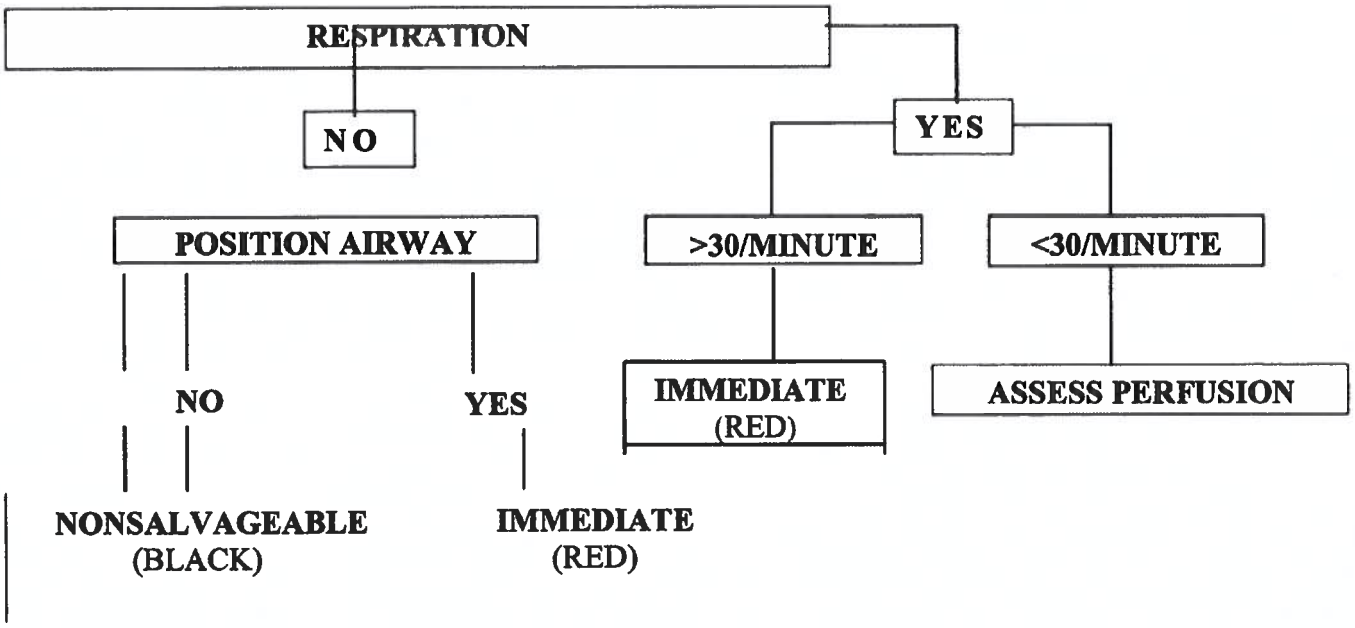
VENTILATION (or RESPIRATIONS) (R)
PERFUSION (P)
MENTAL STATUS (M)

STEP 1

The initial medical responder enters the incident area, identifies self and directs all patients who can walk to gather and remain in a safe place. This system identifies these patients who presently have sufficient respiratory, circulatory, mental and motor function to walk. Most of these patients will be given delayed/green tags; however, they are not tagged at this time, but triaged separately later. This is the first triage and the patient's status may change in the future.

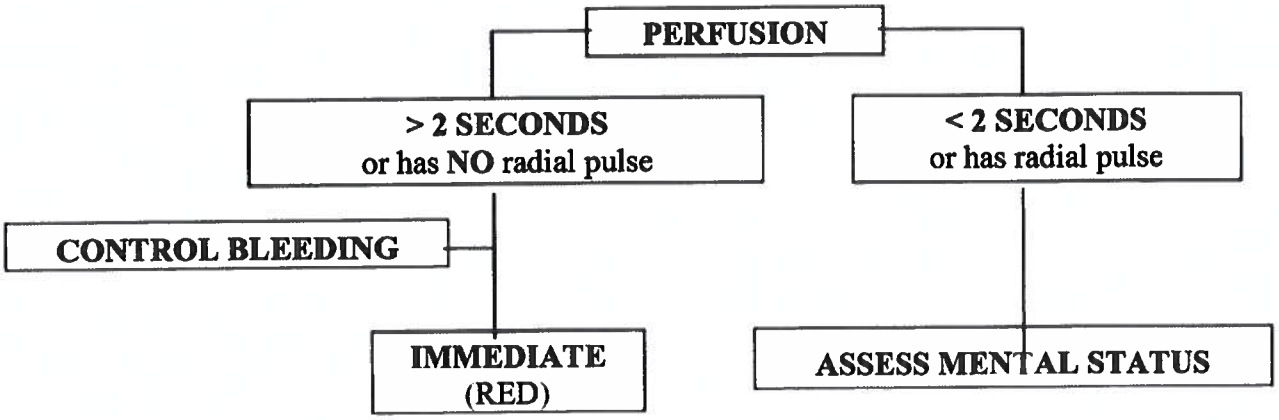
STEP 2

Begin evaluation of the non-ambulatory patients where they are lying. Assess patient's RESPIRATIONS. Are they normal, rapid or absent? If absent, reposition airway to see if breathing begins. If respirations remain absent, tag BLACK. Do not perform CPR. If the patient requires help maintaining an open airway or has a respiratory rate > (greater than) 30 per minute, tag RED (attempt to use bystanders to hold position of the airway). If respirations are normal < (less than) 30 per minute, go to the next step.



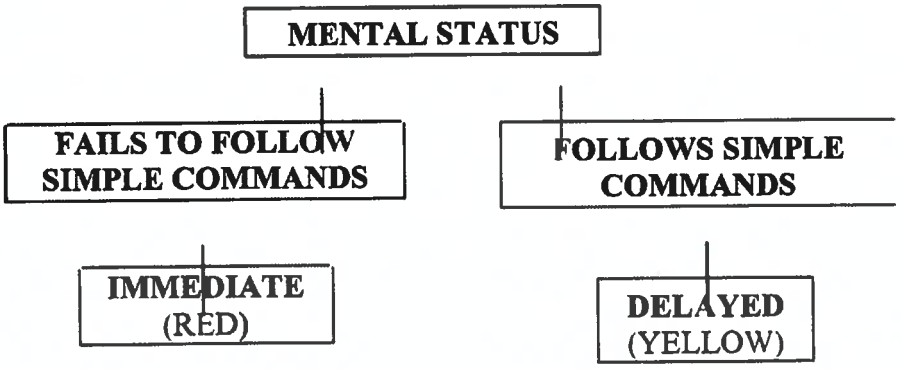
STEP 3

Assess patient's PERFUSION. Perfusion can be assessed by performing the capillary refill test or by palpating a radial pulse. If the capillary refill is > 2 seconds or if the radial pulse is absent, tag RED. If the capillary refill is < 2 seconds or if the radial pulse is present, go to the next step. Any life threatening bleeding should be controlled now and if possible, elevate the patient's legs to begin shock treatment (attempt to utilize non-EMS person to hold pressure/bleeding control).



STEP 4

Assess patient's MENTAL STATUS. If the patient has not already demonstrated that he can follow simple commands, ask them to perform a simple task. If the patient cannot follow simple commands, the patient is tagged RED. If the patient can follow simple commands, the patient is tagged YELLOW or GREEN depending on their condition (the victims injuries will determine the priority of yellow vs. green, i.e. multiple fractures would require a higher level of treatment than superficial lacerations).



"GREEN" patients will need to be triaged at this point to determine potential threatening injuries. They may need to be reassigned to a different classification.

The START plan is a simple, step-by-step triage and treatment method to be used by all levels of prehospital providers at multiple patient incidents. This method allows for rapid identification of those patients who are at the greatest risk for early death, and the provision of basic life-saving/stabilization techniques.

Agency Contact Numbers

Hospitals	Phone	Fax
Alta Vista Hospital	**505-426-3511**	

Dispatch's	Phone	Fax
NorthCom/New Mexico State Police	**505-425-6771**	
Las Vegas PD Dispatch	**505-425-7504**	

EOC's	Phone	Fax
San Miguel County EOC	**505-426-3340**	
NMDHSEM EOC	**505-476-9635**	**505-471-5922**
NMDOH EOCR	**505-231-5506 / 505231-4018**	**505-476-2694**

Supporting Agencies	Phone	Fax
American Red Cross	**1-800-560-2302**	
Superior Ambulance	**505-836-7984**	

MEDICAL GROUP

CHECKLISTS

INCIDENT COMMAND CHECKLIST

RESPONSIBILITIES:

Assume responsibility for the entire Multiple Patient Incident.

READ ENTIRE CHECKLIST

DUTY CHECKLIST:

- Identify previous Incident Commander and facilitate transfer of command.
- Identification vest.
- Identify the incident command post and establish unified command.
- Assess situation and determine needs.
- Identify Staging, and as appropriate, Staging Area Manager.
- Contact and work in close proximity to Medical.
- Request additional equipment and/or manpower as necessary.
- Update Fire Communications on incident progress.
- Identify a PIO and Safety Officer.
- Maintain scene security.
- Direct outside support agencies as needed:
    - Law Enforcement
    - Medical Examiner
    - Public Utilities
    - Red Cross
    - Emergency Management
    - Fire Marshall

OPERATIONS/MEDICAL GROUP CHECKLIST

RESPONSIBILITIES:
Direct and supervise the overall medical operations.

READ ENTIRE CHECKLIST

DUTY CHECKLIST:

- Report to and work in close proximity to the Incident Commander.
- Obtain needed equipment (vest, clipboard, checklists).
- Identification vest.
- Assess medical situation and needs; report to COMMAND.
- Assure that all appropriate Medical ICS positions are filled.
    - Triage
    - Treatment
    - Transport

- Determine that all the appropriate help has been called:
    - Ambulances
    - Medic Units
    - Local MPI Units
    - Bus
    - Helicopter

    - Establish communication with DMCC, request to open protocol for MPI. Give DMCC size-up of situation with estimate of patients and categories of injured.
    - Consult with Treatment Leader on location of treatment area.
    - Consult with Transport Leader regarding location of transport area and establishment of communication with DMCC.
    - Consult with Triage Leader to determine location of the funnel point.
    - Identify an equipment pool area adjacent to the treatment area for incoming medical equipment.
    - Identify a manpower pool for Litter Bearers. Notify Triage, Treatment and Transport.

TRIAGE LEADER CHECKLIST

RESPONSIBILITIES:

Direct and coordinate the evaluation, prioritization, and tagging of patients.
TRIAGE will coordinate litter bearers to facilitate patient movements.

READ ENTIRE CHECKLIST

DUTY CHECKLIST:

- Obtain needed equipment (triage belt, clipboard, vest).
- Identification vest.
- Identify triage member(s) and implement triage process.
- Estimate number of patients (if possible categories) and report to Medical.
- Consult with Medical on location of funnel point.
- Determine where patients will be numbered, and facilitate numbering.
- Acquire medical supplies for transporting patients to treatment area.
- Identify and brief the Litter Bearers on job assignments.
- Coordinate with Treatment Leader to assure that patients are being delivered to the correct treatment area.
- Maintain safety and security of the triage area.
- Keep Medical informed of your status.
- Report to Medical for reassignment when triage is completed.

TREATMENT LEADER CHECKLIST

RESPONSIBILITIES;

Direct and coordinate treatment of patients in treatment area.

READ ENTIRE CHECKLIST

DUTY CHECKLIST:

- Identification vest.
- Obtain needed supplies (vest, treatment tracking form, flags, medical supplies).
- Obtain estimate of the number of patients.
- Consult with Medical to determine location of treatment area.
- Set up treatment area into 3 sections; red, green, and yellow.
- Set up identification flags, 3 colors.
- Using the treatment tracking form, record all patients entering the treatment area.
- Assure that all patients in the treatment area are properly numbered.
- Assign incoming personnel to specific treatment sections.
- Identify, as needed, leaders in each treatment section.
- Assure that appropriate medical care is being delivered.
- Request medical supplies or personnel needs through Medical.
- Record patients on Treatment Tracking Form.

TRANSPORTATION LEADER CHECKLIST

RESPONSIBILITIES:

Direct, coordinate and record the transportation of all patients to medical facilities. Transport will maintain radio communications with the DMCC for patient distribution to receiving hospitals.

READ ENTIRE CHECKLIST

DUTY CHECKLIST:

- Obtain needed equipment (transportation tracking form, vest).
- Identification vest.
- Obtain estimate of the number of patients.
- Identify a safe, efficient loading area adjacent to the treatment area. Secure access and egress routes and inform STAGING.
- Determine that an appropriate number of transport vehicles have been called to the incident.
- Additional equipment is requested through Medical. Transport units may be requested directly from staging.
- Consult with Treatment Leader to determine when and what patients are ready for transport.
- Identify and brief Litter Bearers as necessary.
- Initiate communication with DMCC for patient distribution. Communication should be maintained as needed for expeditious patient transfer.
- Apply Trauma Triage tag to patient for patient tracking. Ensure that trauma tag is applied.
- Using the transportation tracking form, document patient destinations and transporting agencies.
- Maintain security and safety in patient loading area.
- Keep Medical informed of your status and give patient tracking information to be passed to

Regular

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/15/2018 DEPT: Executive MEETING DATE: 11/20/2018

ITEM/TOPIC: ***Presentation by John Spencer Tree Board Update***

ACTION REQUESTED OF COUNCIL: ***No Action***

BACKGROUND/RATIONALE:

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

_____
SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

Tonita Gurulé Girón

TONITA GURULÉ-GIRÓN
MAYOR

_____
TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)

_____
ANN MARIE GALLEGOS

INTERIM CITY MANAGER

_____
ESTHER GARDUNO MONTOYA
CITY ATTORNEY
(ALL CONTRACTS, ORDINANCES AND RESOLUTIONS MUST BE REVIEWED)

GENERAL FUND REVENUE COMPARISON
THRU OCTOBER 31, 2018 34% OF YEAR LAPSED (4 of 12 months)
FISCAL YEAR 2019

Total Budget to Actual Comparison

	A	B	C	D	E	G
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	(E/B) FY 2019 % REV
PROPERTY TAX	1,291,000	1,485,000	495,000	149,843	72,988	5%
GROSS RECEIPT TAX 1.225	3,550,000	3,550,000	1,183,333	1,163,544	1,234,669	35%
FRANCHISE TAX	775,000	750,000	250,000	228,358	235,845	31%
GROSS RECEIPT TAX .75	2,440,000	2,332,500	777,500	764,525	810,935	35%
1/8 INFRASTRUCTURE	360,000	372,000	124,000	121,984	134,557	36%
GRT .25 (JAN 2011)	725,000	1,060,000	353,333	349,102	374,862	35%
GRT -HOLD HARMLESS (JULY 2015	(110,400)	-	0	-	-	
LICENSE & FEES	61,000	83,500	27,833	26,521	11,445	14%
INTERGOVERNMENTAL	83,716	77,144	25,715	24,966	29,830	39%
LOCAL-FINES	77,000	66,500	22,167	21,331	18,665	28%
LOCAL-MISC	1,737,235	1,648,800	549,600	579,813	545,405	33%
TOTAL	10,989,551	11,425,444	3,808,481	3,429,989	3,469,199	30%

(License& Fees-Business Licenses, Liquor Licenses and Building Permits,Development Fees)
(Local Fines- Court Fines, Library Fines, Traffic Safety Fines)

FISCAL YEAR 2019

Total Budget to Actual Comparison

	A	B	C	D	E	F	H
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	FY 2019 AVAIL. BAL.	(E/B) % BDGT
JUDICIAL	307,959	294,648	98,216	93,440	85,654	208,994	29%
GOVERNING BODY		73,038	24,346		24,841	48,197	34%
MAYOR		60,736	20,245		14,320	46,416	24%
MANAGER		261,412	87,137		61,782	199,630	24%
EXECUTIVE	397,969		0	126,239		0	0%
MUNICIPAL CLERK	272,858	222,499	74,166	70,450	71,705	150,794	32%
CITY ATTORNEY	231,944	229,704	76,568	56,656	42,343	187,361	18%
PERSONNEL/HR	278,960	245,259	81,753	86,098	58,876	186,383	24%
FINANCE	452,393	467,223	155,741	136,652	117,201	350,022	25%
COMMUNITY DEV.	533,845	528,706	176,235	130,281	101,247	427,459	19%
POLICE	3,854,744	4,006,680	1,335,560	1,114,882	1,152,610	2,854,070	29%
CODE ENFORCEMENT	136,113	150,334	50,111	40,563	27,688	122,646	18%
ANIMAL SHELTER	135,490	135,490	45,163	43,914	32,990	102,500	24%
FIRE	1,257,365	1,357,467	452,489	376,821	375,572	981,895	28%
PUBLIC WORKS/AIRPORT	474,004	450,832	150,277	136,256	123,190	327,642	27%
PARKS	286,222	290,709	96,903	87,129	56,595	234,114	19%
AIRPORT	0	0	0	0	0		0%
LIBRARY	205,217	200,046	66,682	61,130	49,743	150,303	25%
MUSEUM	150,845	148,116	49,372	42,767	35,895	112,221	24%
GENERAL SERVICES	2,358,248	3,161,410	1,053,803	650,299	690,632	2,470,778	22%
SALARY CONTINGENCY	0	0	0	0	0		0%
TRANSFERS	719,667	739,667	246,556	239,836	246,500	493,167	33%
TOTAL	12,053,843	13,023,976	4,341,325	3,493,413	3,369,386	9,654,590	26%

ENTERPRISE FUNDS-REVENUE COMPARISON
THRU OCTOBER 31, 2018 34% YEAR LAPSED (4 of 12 months)
FISCAL YEAR 2019

Total Budget to Actual Comparison

	A	B	C	D	E	G (E/B) %
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	BUDGET
WASTE WATER (610)	2,866,100	2,966,100	988,700	944,427	1,028,327	35%
NATURAL GAS (620)	5,236,000	5,036,000	1,678,667	675,324	653,122	13%
SOLID WASTE (630)	3,419,400	3,419,400	1,139,800	1,133,548	1,137,103	33%
WATER (640)	4,800,150	5,138,950	1,712,983	1,743,583	1,819,058	35%
Total of Enterprise Funds	16,321,650	16,560,450	5,520,150	4,496,882	4,637,609	28%

ENTERPRISE FUNDS-EXPENDITURES COMPARISON
THRU OCTOBER 31, 2018 34% YEAR LAPSED (4 of 12 months)
FISCAL YEAR 2019

Total Budget to Actual Comparison

	A	B	C	D	E	F	H (E/B) %
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	FY 2019 AVAIL. BAL.	BUDGET
WASTE WATER(610)	3,297,778	3,852,958	1,284,319	854,507	923,397	2,929,561	24%
NATURAL GAS (620)	5,938,908	6,972,273	2,324,091	933,650	861,025	6,111,248	12%
SOLID WASTE (630)	3,733,787	3,729,597	1,243,199	934,822	866,725	3,616,145	23%
WATER (640)	5,681,820	4,707,663	1,569,221	1,719,065	1,249,960	2,619,062	27%
Total of Enterprise Funds	18,652,293	19,262,491	6,420,830	4,442,045	3,901,107	15,276,015	20%

RECREATION DEPARTMENT-REVENUE COMPARISON
THRU OCTOBER 31, 2018 - 34% OF YEAR LAPSED 4 OF 12 MONTHS
FISCAL YEAR 2019

	A	B	C	D	E	G (E/B)
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	% REV
RECREATION-TAXES (Cig)	0	0				0%
WELLNESS CENTER	115,000	115,000	28,750	34,738	36,038	30%
OPEN SWIM	20,000	20,000	5,000	3,977	4,195	20%
YAFL	0	0	0	0	0	0%
YABL	20,000	16,500	4,125	4,810	2,103	29%
SUMMER FUN PROGRAM	20,000	26,000	6,500	2,840	7,224	11%
RECREATION-OTHER	108,964	85,000	21,250	11,293	5,898	13%
GEN FUND TRANSFER	400,000	400,000	99,960	133,280	133,280	33%
TOTAL	683,964	683,964	165,585	190,938	188,738	28%

RECREATION DEPARTMENT- EXPENDITURE COMPARISON
THRU OCTOBER 31, 2018 - 34% OF YEAR LAPSED 4 OF 12 MONTHS
FISCAL YEAR 2019

	A	B	C	D	E	F	H (E/B)
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	FY 2019 AVAIL. BAL.	% BDGT
EMPLOYEE EXP.	533,351	633,166	158,292	162,591	159,352	473,814	25%
YAFL	0	0	0	0	0	0	0%
YABL	4,050	8,500	2,125	0	1,128	7,372	13%
OTHER OPERATING EXP.	138,562	95,350	23,838	28,592	22,692	72,658	24%
CAPITAL OUTLAY	8,000	9,500	2,375	3,856	3,321	6,179	35%
TOTAL	683,963	746,516	186,629	195,039	186,493	560,023	25%

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/9/18 **DEPT: Police** **MEETING DATE: 11/~~21~~ 20/18**

ITEM/TOPIC: Approval/Disapproval to accept funding through the Department of Justice to purchase bullet proof vests through a 50/50 match for the Las Vegas City Police Department.

ACTION REQUESTED OF COUNCIL: *Approval/Disapproval to accept funds.*

BACKGROUND/RATIONALE: The Las Vegas Police Department respectfully requests permission to accept funds through the Department of Justice to accept funds in the amount of $2015.00 to purchase bullet proof vests for the Las Vegas City Police Department.

STAFF RECOMMENDATION: Requesting approval to accept funding through the Department of Justice.

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

KENNETH JENKINS, DEPUTY CHIEF OF POLICE

REVIEWED AND APPROVED BY:

TONITA GURULÉ-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)

ANN MARIE GALLEGOS
INTERIM CITY MANAGER

PURCHASING AGENT
(FOR BID/RFP AWARD)

ESTHER GARDUNO MONTOYA
CITY ATTORNEY
(ALL CONTRACTS MUST BE REVIEWED)

Revised 4/20/16

CITY OF LAS VEGAS NEW MEXICO

Beatrice Salazar <bea.salazar@lasvegasnm.gov>

Bulletproof Vest Partnership 2018 Awards

1 message

BVP Email Account <ojp@public.govdelivery.com> Wed, Oct 3, 2018 at 9:59 AM
Reply-To: ojp@public.govdelivery.com
To: bea.salazar@lasvegasnm.gov

Dear BVP applicant,

The Bureau of Justice Assistance (BJA) is pleased to inform you that your agency will receive an award under the Fiscal Year (FY) 2018 Bulletproof Vest Partnership (BVP) solicitation. These funds have been posted to your account in the BVP System. A complete list of FY 2018 BVP awards is available at: https://ojp.gov/bvpbasi/.

The FY 2018 award may be used for National Institute of Justice (NIJ) compliant armored vests which were ordered after April 1, 2018. The deadline to request payments from the FY 2018 award is August 31, 2020, or until all available funds have been requested. Awards will not be extended past that date, and any unused funds will be forfeited.

Please see the following websites for a list of NIJ compliant vests:

Ballistic Vests: https://nij.gov/topics/technology/body-armor/pages/compliant-ballistic-armor.aspx

Stab Resistant Vests: https://nij.gov/topics/technology/body-armor/pages/compliant-stab-armor.aspx

As a reminder, all jurisdictions that applied for FY 2018 BVP funding certified that a mandatory wear policy was in place for their jurisdiction. BJA will be conducting reviews of the mandatory wear policies as funds are requested from the BVP System. For more information on the BVP mandatory wear policy, please see the BVP Frequently Asked Questions document: https://ojp.gov/bvpbasi/docs/FAQsBVPMandatoryWearPolicy.pdf

Finally, please visit the following page for checklists and guides for each step of the BVP process: https://ojp.gov/bvpbasi/bvpprogramresources.htm.

For questions regarding the BVP Program or your award, please do not hesitate to contact the BVP Help Desk at vests@usdoj.gov or 1-877-758-3787.

Thank you

BVP Program Support Team

Bureau of Justice Assistance

This email was sent to bea.salazar@lasvegasnm.gov using GovDelivery Communications Cloud on behalf of: Office of Justice Programs · 810 Seventh Street, NW · Washington, DC 20531 · 202-514-2000

NJ	WARREN TOWNSHIP	$2,968.35
NJ	WASHINGTON TOWNSHIP (LONG VALLEY)	$4,875.00
NJ	WASHINGTON TOWNSHIP (ROBBINSVILLE)	$1,669.80
NJ	WASHINGTON TOWNSHIP (TURNERSVILLE)	$11,675.00
NJ	WAYNE TOWNSHIP	$7,305.00
NJ	WEEHAWKEN TOWNSHIP	$8,400.00
NJ	WEST DEPTFORD TOWNSHIP	$4,464.00
NJ	WEST NEW YORK TOWN	$8,000.00
NJ	WEST ORANGE TOWNSHIP	$9,752.00
NJ	WEST PATERSON BOROUGH	$2,580.00
NJ	WEST WILDWOOD BOROUGH	$750.00
NJ	WEST WINDSOR TOWNSHIP	$3,852.00
NJ	WESTAMPTON TOWNSHIP	$4,276.30
NJ	WESTFIELD TOWN	$4,755.40
NJ	WESTWOOD BOROUGH	$3,900.00
NJ	WHARTON BOROUGH	$1,442.55
NJ	WILDWOOD CITY	$3,393.00
NJ	WILDWOOD CREST BOROUGH	$3,474.00
NJ	WILLINGBORO TOWNSHIP	$6,720.00
NJ	WINSLOW TOWNSHIP	$8,360.00
NJ	WOODBURY HEIGHTS BOROUGH	$1,948.04
NJ	WOODCLIFF LAKE BOROUGH	$1,320.00
NJ	WASHINGTON TOWNSHIP	$2,353.50
NJ	WOODLYNNE BOROUGH	$1,582.50
	Totals for NJ(257 Jurisdictions):	**$1,327,919.27**
NM	ALAMOGORDO CITY	$6,745.00
NM	ANGEL FIRE VILLAGE	$2,000.00
NM	ANTHONY CITY	$2,691.00
NM	AZTEC CITY	$1,600.00
NM	BELEN CITY	$1,999.98
NM	BERNALILLO TOWN	$1,887.50
NM	BOSQUE FARMS VILLAGE	$740.00
NM	CARRIZOZO TOWN	$1,600.00
NM	CHAVES COUNTY	$3,920.00
NM	CLOVIS CITY	$6,000.00
NM	CUBA VILLAGE	$1,920.00
NM	CURRY COUNTY	$4,260.00
NM	DEMING CITY	$2,184.00
NM	FARMINGTON CITY	$27,360.00
NM	JEMEZ SPRINGS VILLAGE	$1,367.40
NM	LAS VEGAS CITY	$2,015.00
NM	LEA COUNTY	$12,750.00
NM	LINCOLN COUNTY	$6,000.00
NM	LOS LUNAS VILLAGE	$5,220.00
NM	LOVINGTON CITY	$2,000.00
NM	LOS ALAMOS COUNTY	$6,392.00
NM	MESILLA TOWN	$3,310.00

CITY COUNCIL MEETING AGENDA REQUEST

DATE 11/02/18 DEPT: Senior Center MEETING DATE: 11/~~21~~20/18

ITEM/TOPIC: Reject Bid #2019-03 for the Senior Center Service Access Parking Lot Reconstruction.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval to Reject Bid #2019-03.

BACKGROUND/RATIONALE: The single bid received was over budget.

STAFF RECOMMENDATION: Reject the Bid.

COMMITTEE RECOMMENDATION: N/A

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON
MAYOR

TANA VEGA, INTERIM
FINANCE DIRECTOR
(PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

PURCHASING AGENT
(FOR BID/RFP AWARD)

ESTHER GARDUNO MONTOYA,
CITY ATTORNEY
(ALL CONTRACTS MUST BE REVIEWED)

WHPacific

October 4, 2018

Ms. Wand Salazar, BSW
Senior Center Manager
City of Las Vegas
P.O. Box 160
Las Vegas, New Mexico 87701

RE: Senior Center North Access Parking Lot – Bid Opening

Dear Ms. Salazar:

Only one sealed bid was received for the referenced project on Wednesday, October 3, 2018 at 2:00 pm as advertised. It was opened and read aloud. The bid was been reviewed and compared to the Engineer's Estimate. There were no arithmetic errors. The bid was received from R.L. Leeder Company.

The bid received was $125,719.00. The Engineer's Estimate was $75,498.15. Based on conversations with staff and previous attempts to obtain a cost, this bid is well above the engineer's estimate and is also higher than the available funding. I therefore recommend a rejection of this bid.

Should you have any questions or require additional information, please contact me at your convenience at 247-0294 or kjacobsen@whpacific.com.

Sincerely,

WHPacific, Inc.

Karen M. Menné-Jacobsen

By: Karen M. Menné-Jacobsen, P.E.
Project Manager

P:\Las Vegas, City of NM\P0019297W.1.1\Execution\Construction\Bidding\181004 BID OPEN LTR.docx

CITY OF LAS VEGAS
RFP/BID/OPENING

DATE: 3-Oct-2018

OPENING NO.: **2019-03**

TIME: 2:00 PM

DEPARTMENT: **SENIOR CENTER**

LOCATION: City of Las Vegas Chambers
1700 N. Grand Ave.
Las Vegas, NM 87701

ITEM(S): **SENIOR CENTER SERVICE ACCESS**
PARKING LOT RECONSTRUCTION

RECEIVED FROM:	AMOUNT	SUB CONTRACTOR LIST	BID BOND	AFFIDAVIT NOTARIZED	CAMPAIGN DISC. FORM
1 RL Leider Company	125,719.00			✓	✓
2					
3					
4					
5					
6					

COMPANY REPRESENTATIVE	COMPANY NAME
1 Rupi Apodaca	CoLV Inventory
2 [illegible]	CLV P/M
3 Karen Jackson	UNPacific
4 Sherry Leider	RL LEIDER CO
5 Yvonne Zaraya-Cordova	CLV SC
6 [illegible]	CLV Purchasing
7 [illegible]	CLV SCenter
8 Daniel Gurule	CLV Public Works
9	
10	

(use other side of form when full)

ORIGINALS TAKEN BY CITY CLERK:
[illegible]
DATE: 10/3/18

OPENED BY: FINANCE DEPARTMENT
[illegible]
DATE: 10/3/2018

COPIES TAKEN BY DEPT:
[illegible]
DATE: 10/3/18

CITY COUNCIL MEETING AGENDA REQUEST

DATE: **11/02/2018** **DEPT: Finance** **MEETING DATE: 11/~~21~~20/2018**

ITEM/TOPIC:. Resolution 18-45

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution 18-45.

BACKGROUND/RATIONALE: The City of Las Vegas is requesting increases and decreases to the FY2019 Budgeted revenues, expenditures, transfers to and from within various funds of the FY2019 Budget.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)

ANN M. GALLEGOS
INTERIM CITY MANAGER

PURCHASING AGENT
(FOR BID/RFP AWARD)

ESTHER GARDUNO MONTOYA
CITY ATTORNEY
(ALL CONTRACTS MUST BE REVIEWED)

STATE OF NEW MEXICO
MUNICIPALITY OF CITY OF LAS VEGAS
RESOLUTION 18-45
FISCAL YEAR 2018-2019
BUDGET ADJUSTMENT REQUEST

WHEREAS, The Governing Body in and for the Municipality of Las Vegas. State of New Mexico has developed a budget adjustment request for fiscal year 2018-2019; and

WHEREAS, said budget adjustment request was developed on the basis of need and through cooperation with all user departments. elected officials and other department supervisors, please see attached schedule; and

WHEREAS, the City of Las Vegas is in need of making budget adjustments in the 2018-2019 fiscal year budget; to include an increase of $305,891 in the E91 I Program. an increase of $174,602 in the 2017 CFP Grant, an increase of $68,585 in the 2018 CFP Grant, an increase of $115,190 in Low Rent Housing. Total increase of $560,763.

WHEREAS, it is the majority opinion of this governing body that the budget adjustment request is approved and meets the requirements as currently determined for fiscal year 2018-2019;

NOW, THEREFORE BE IT RESOLVED, that the Governing Body of the Municipality of the City of Las Vegas. State of New Mexico hereby approves the budget adjustment request herein above described and respectfully requests approval from the Local Governing Division of the Department of Finance and Administration.

RESOLVED: In session this 20th day of November, 2018.

_____
Tonita Gurule-Giron, Mayor

ATTEST:

_____
Casandra Fresquez. City Clerk

REVIEWED AND APPROVED AS TO LEGAL SUFFICIENCY ONLY:

_____
Esther Garduno Montoya, City Attorney

11/2/2018

CITY OF LAS VEGAS
RESOLUTION #18-45
BUDGET ADJUST REQUEST
FISCAL YEAR 2019

Resolution 18-45	Fund		Revenues	Transfers		Expenditures	
E911	294-0000-400-5000	Revenue	$ 305,891.00			$ -	Grant Revenue
E911	294-0000-800-8000	Equipment		$ -		$ 305,891.00	Equipment
2018 CFP /Grant	673-0000-400-5000	Add'l Grant Revenue	$ 174,602.00	$ -			Grant Revenue
2018 CFP/Grant	673-0000-0001-	Site Improvements		$ -		$ 139,682.00	Site Improvements
2018 CFP/Grant	673-0000-0001-	Transfers out 652		$ (34,920.00)			Transfer to 652
2017 CFP/Grant	676-0000-0001	Add'l Grant Revenue	$ 68,585.00				Grant Revenue
2017 CFP/Grant	676-0000-0001	Transfer to 652		$ (68,585.00)			Transfer to 652
Housing-Low Rent	652-50700-0001	Betterments & Additions				$ 62,872.00	Betterments & Additions
Housing-Low Rent	652-50700-0001	Maint of Bld & Grounds				$ 52,318.00	Maint of Bld & Grounds
Housing-Low Rent	652-0000-61100	Transfer in from 673		$ 34,920.00			Transfer from 673
Housing-Low Rent	652-0000-61100	Transfer in from 676		$ 68,585.00			Transfer from 676
Housing-Low Rent	652-0000-61100	Transfer in from 101		$ 11,685.00			
101-0000-100-1101	General Fund	Cash Balance 7/2018	$ 11,685.00				
101-0000-800-9000	General Fund	Transfer out 652		$ (11,685.00)			$15,000 Annual Transfer
		Total	$ 560,763.00	$ -	$ -	$ 560,763.00	

$ -

Regular or Special

CITY COUNCIL MEETING AGENDA REQUEST

DATE:11/5/2018 **DEPT: Finance** **MEETING DATE: 11/20/2018**

DISCUSSION ITEM/TOPIC: Review and certify Fixed Assets/Inventories

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Certification of Fixed Assets/Inventories for FY18 as per Sections 12-6-1 NMSA 1978 through 12-6-14 NMSA 1978 Article 6 of Audit Act.

BACKGROUND/RATIONALE: The City of Las Vegas is requesting review and certification of the 2018 Fixed Assets/Inventories as part of the 2018 Audit.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

Tonita Gurule-Giron

TONITA GURULE-GIRON
MAYOR

Ann Marie Gallegos DOO

ANN M. GALLEGOS
INTERIM CITY MANAGER

PURCHASING AGENT
FOR BID/RFP AWARD)

Tana Vega

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)

ESTHER GARDUNO MONTOYA
CITY ATTORNEY
(ALL CONTRACTS MUST BE REVIEWED)

CERTIFICATION OF GOVERNING BODY FOR THE ANNUAL FIXED ASSETS/INVENTORIES FOR FY18

STATE OF NEW MEXICO
COUNTY OF SAN MIGUEL
CITY OF LAS VEGAS

We, members of the governing body of the City of Las Vegas of San Miguel County, being duly sworn according to law,

1. We are duly elected members of the City of Las Vegas in San Miguel;

2. In the performance of our duties, and pursuant to 12-6-1NMSA1978 through 12-6-14 NMSA 1978 Article 6 Audit Act;

3. We certify that we have reviewed and are familiar with, as a minimum, the Fixed Assets/Inventories for FY18.

_____ Tonita Gurule-Giron, Mayor

_____ Barbara Casey

_____Vince Howell

_____David G. Romero

_____David Ulibarri

ATTEST:

_____Casandra Fresquez, City Clerk

REVIEWED AND APPROVED AS TO LEGAL SUFFICIENCY ONLY:

_____ Esther Garduno Montoya, City Attorney

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 10/24/18 **DEPT: PUBLIC WORKS** **MEETING DATE: 11/~~21~~20/18**

ITEM/TOPIC: Approval/Disapproval of Resolution No. 18-44

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution 18-44, to approve and support a request for a one year extension to FY 2017/2018 Project No. MAP-7647(911).

BACKFROUND/RATIONALE: As part of the Cooperative Agreement submittal criteria for New Mexico Department of Transportation Municipal Arterial Program (MAP), a Resolution of support is required from our Local Governing Body ensuring support for a one year extension for the Planning, Design, Construction, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to Mountain View Drive from Grand Avenue to 7th Street. Total cost of project is $274,711.00; NMDOT share is $206,033.00 and Match Waiver received is $68,678.00.

STAFF RECOMMENDATION: Approval of Resolution 18-44.

THIS REQUEST MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00P.M. ON FRIDAY ONE AND HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON

ANN MARIE GALLEGOS
INTERIM CITY MANAGER

TANA VEGA
INTERIM FINANCE DIRECTOR (PROCUREMENT)

ESTHER GARDUÑO-MONTOYA
CITY ATTORNEY (ALL CONTRACTS AND RESOLUTIONS MUST BE REVIEWED)

CITY OF LAS VEGAS
RESOLUTION NO. 18-44

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED BY New Mexico Department of transportation (NMDOT)

WHEREAS, the Governing Body of the City of Las Vegas support a request for a one year extension to jointly coordinate the grant administered by the New Mexico Department of Transportation (NMDOT).

WHEREAS, the City of Las Vegas and NMDOT have entered into a joint coordinated effort and;

WHEREAS, the Governing Body provides authorization and approval for an extension request of one year through June 2020 for FY 2017/2018: Project No. MAP-7647(911), Control No. L400321, Contract No. D15612, Mountain View from Grand Avenue to 7th Street, due to road and weather delays and;

NOW, THEREFORE, it is respectfully requested that authorization be given of said request to the NMDOT District 4 office for approval of said request.

PASSED, APPROVED, AND ADOPTED this _____ day of November, 2018.

CITY OF LAS VEGAS

_____
TONITA GURULE-GIRON
Mayor

ATTEST:

_____
CASANDRA FRESQUEZ,
CITY CLERK

CITY OF LAS VEGAS, NM
RESOLUTION NO. 17-25

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM AND REQUEST FOR MATCH WAIVER ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS; the City of Las Vegas and the New Mexico Department of Transportation have entered into a Municipal Arterial Program Agreement.

WHEREAS; the total cost of the project will be $274,711.00 to be in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 75% or $206,033.00.
b. City of Las Vegas' proportional matching share shall be 25% or $68,678.00 if a "Hardship" for "Match Waiver" is not deemed to be present by Department of Finance and Administration and the Department of Transportation.

TOTAL PROJECT COST $274,711.00

The City of Las Vegas shall pay all costs, which exceed the total amount of $206,033.00.

WHEREAS; the City of Las Vegas has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriate by New Mexico State Legislature for Public Entities in need of "Hardship" match money and the City of Las Vegas requests participation in this Match Waiver Program in the amount of $68,678.00.

NOW THEREFORE, BE IT RESOLVED, that the City of Las Vegas determines, resolved and orders as follows:

That the project for this Municipal Arterial Program Agreement is adopted and has a priority standing.

The agreement terminated on June 30, 2019 and the City of Las Vegas incorporates all the all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW THEREFORE, BE IT RESOLVED, by the City of Las Vegas to enter into Municipal Arterial Program Agreement Project Number MAP-7647(911), Control Number L400321, with the New Mexico Department of Transportation's drainage improvements and miscellaneous construction to various entity streets within the control of the City of Las Vegas, San Miguel County, New Mexico.

PASSED, APPROVED, AND ADOPTED THIS 19 DAY OF JULY, 2017.

CITY OF LAS VEGAS

Tonita Gurule Giron

Mayor

ATTEST/

Casandra Fresquez, City Clerk

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11-08-18 **DEPT: Community Development** **MEETING DATE: 11-20-18**

ITEM/TOPIC:
Rezone of a property located at 338 Santa Ana Street, Las Vegas, New Mexico via Ordinance #18-07, amendment to the Official Zoning Map for property.

ACTION REQUESTED OF COUNCIL:
Conduct a public hearing and approve or disapprove the adoption of proposed ordinance.

BACKGROUND/RATIONALE:
Mr. Gilberto Juan Lorenzo Martinez, Owner of a 0.10 acres +/- within Block M, of the Town, now City of Las Vegas, and known as 338 Santa Ana Street, Las Vegas, New Mexico appeared before the Las Vegas Planning and Zoning Commission on October 29, 2018. Mr. Martinez is requesting that said property be re-zoned from the present R-2 (Multi-Family Residential Zone) to an C-1 (Neighborhood Commercial Zone). The applicant's intent is to lease the property to a healthcare cooperative to provide medical care within a "home" like setting. The cooperative consists of a midwife, a therapist and an acupuncturist.

STAFF RECOMMENDATION:
Consideration by Mayor and Council.

COMMITTEE RECOMMENDATION:
The Planning & Zoning Commission recommends approval of the re-zone from a Residential Zone to a Commercial Zone.

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY MANAGER'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

Maria D Perea /

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

Tonita Gurule-Giron

TONITA GURULÉ-GIRÓN
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR
(PROCUREMENT)

Ann M. Gallegos

ANN MARIE GALLEGOS
INTERIM CITY MANAGER

PURCHASING AGENT
(FOR BID/RFP AWARD)

CITY ATTORNEY
(ALL CONTRACTS MUST BE REVIEWED)

Approved to form 1-26-15

CITY COUNCIL
RECORD PROPER

Applicants/Owners:	**Gilberto Juan Lorenzo Martinez** **P. O. Box 2, Montezuma, NM 87731**
Location:	**338 Santa Anna Street, Las Vegas, NM 87701**
Hearing Date:	**Monday, October 29, 2018**

ACTION REQUESTED:
Approve or disapprove the Adoption of Ordinance No. 18-07 amending the Official Zoning Map from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) for property located at 338 Santa Ana Street, Las Vegas, New Mexico 87701.

BACKGROUND:
Mr. Gilberto Juan Martinez, Applicant/Owner, has applied for an amendment to the official zoning map of the City of Las Vegas. The application is to change the zoning of a 0.10 acre ± parcel within Block M of the Town, now the City of Las Vegas. A survey of property is attached and property is addressed as 338 Santa Ana Street, Las Vegas, New Mexico. The purpose of the zone change request is to have a healthcare cooperative provide care within a "home" like setting. The cooperative consists of a midwife, a therapist and an acupuncturist. The City's Planning & Zoning Commission held a public hearing on Monday, October 29, 2018 to review testimony in favor or opposition of the request. A total of 14 notices were mailed out to property owners within a radius of 100 feet. Several property owners were at the Planning & Zoning Commission meeting and voiced their concerns about safety in the area with there being a school close by, about parking as Santa Ana is a one way street and the traffic congestion during the time that students are being dropped off or picked up from school. Property owners were also concerned that it was going to be another Boarding Home and were worried about the type of patients being seen at the location. There was opposition to the request. after consideration, the City's Planning & Zoning Commission made the recommendation for approval for the requested zone change.

In accordance with Chapter 450-98 of the zoning ordinance, an amendment to the Official Zoning Map may be initialized by the landowner by application. Mr. Gilberto Juan Lorenzo Martinez filed the application on October 3, 2018.

EXHIBITS

Exhibit No.	Description (Document Name, date and number of pages)
1	Application to re-zone property located at 338 Santa Ana Street, Las Vegas, New Mexico, received on October 3, 2018 – 1 page
2	Letter of Intent to re-zone above property, not dated, but submitted on October 3, 2018 along with application – 1 page
3	Special Warranty deed recorded at the San Miguel County Clerk's Office on September 16, 2011, Doc. #201103485 - 2 pages
4	Letter to property owner advising of the City Council meeting date and time, dated November 5, 2018 – 1 page
5	Plat of Survey for previous owners, Project #07-021 recorded at the San Miguel County Clerk's Office on March 29, 2007 in Plat Book 56, Page 33 - 1 page
6	Rural Health Cooperative Project description of services that will be offered, information on the providers and days when opened - 1 page
7	List of property owners within 100-feet of subject property sent notification via certified mail, copy of Assessor's Map (1" = 100'), Vicinity Map and Zoning map of subject property – 5 pages
8	Aerial photo of Subject property – 1 page
9	Copy of the Planning & Zoning Commission Record Proper, which was approved - 1 page
10	Findings of Fact and Conclusions of Law and recommendations and not signed by Planning & Zoning Commission Chairperson - 2 pages
11	Copy of Ordinance No. 18-07, submitted to the City Attorney for review on November 5, 2018 - 4 pages

RECEIVED
OCT 3 2018
mdp 9:20 AM

EXHIBIT # 1

CITY OF LAS VEGAS ZONE CHANGE APPLICATION

Name of applicant(s): GILBERTO JUAN LORENZO MARTINEZ

Address of applicant: ~~338 SANTA ANA ST~~ CSLM P.O. BOX 2 Montezuma, NM 877

Property interest of applicant(s): OWNER
Owner, under contract, purchaser, etc.

Home phone #: _____ **work #:** _____ **cell#** 505-429-2593

Address of property to be rezoned: 338 SANTA ANA ST.
If an address does not exist for this property, staff can assist you with assignment of an address.

What is the present use of the property? Residental - Historic Home Tour
Commercial, residential, agricultural

Why do you want to rezone your property? Economic Development, Revitalize Historic Community, Increase Access to Health care

Signature of applicant _____ **Date** OCTOBER 03, 2018

Signature of owner
(If different from applicant) _____ **Date** _____

This area to be filled in by staff

1. ~~DB~~ Doc. # 201103485 **page** _____ **of recorded** ~~deed~~ on Sept 16, 2011

2. **Present zone classification?** R-2 (Multifamily Residential Zone)

3. **What will the zone classification be after the zone change?**
C-1 (Neighborhood Commercial Zone)

Date fee was paid? 10-3-18 **receipt #** 571661

Amount paid? $300.00

Please provide applicant with copy of this application

EXHIBIT # 2

To whom it may concern,
I am writing to state my intent for a zoning change application for my property located at 338 Santa Ana St., Las Vegas, NM 87701. Currently it is zoned as a residential property and I am requesting a change to C-1 commercial neighborhood zoning. The property is a historic home that I have restored and shared with the community as part of the historical home tour in Las Vegas. Currently, I am partnering with a rural healthcare cooperative that would like to provide care to our community. I am interested in being part of the revitalization of our neighborhood in a way that not only will help to protect this historical home but also will help to provide access to healthcare and mental health services. Our county sits within a designated provider shortage area in particular maternity care services have been a challenge. The cooperative that will provide services out of my property consists of a midwife, licensed clinical social worker and an acupuncturist. They plan to provide wrap around services for women and their families. Although I have been approached by outside investors, I have chosen not to accept any of their offers because most of all I am invested in my local community. The providers of the cooperative all live and work within the county and this is why I am interested in supporting their work by requesting this zoning change.

The healthcare cooperative seeks to provide care within a "home" like setting honoring the cultural traditions of our area. This means that there will not be a need to alter the property in any way that would affect the land or surrounding properties. The type of care provided will not require any additional or specialty services from those already provided by the city. By approving this request you will help to provide economic development opportunities for local healthcare providers who normally struggle to remain in our county, protect a historical building that can be enjoyed by many community members, create access for mental health and maternity care services and revitalize our neighborhood.

I look forward to discussing this further before the zoning commission. Please see my attached application which includes my signature.

Sincerely,
Gilberto Martinez

EXHIBIT # 3

Recording Requested By:
Territorial Title of Las Vegas, Inc.
File# 33059
The document contains 2 pages.

Prepared By and Return to:

Fidelity National Title Insurance Co.
8500 Menaul Blvd NE #B-150
Albuquerque, NM 87112

GF# FT000080759-NM01

COUNTY OF SAN MIGUEL }
STATE OF NEW MEXICO } ss

WARRANTY DEED
PAGES: 2

I Hereby Certify That This Instrument Was Filed for Record On The 16TH Day Of September, A.D., 2011 at 03:13:15 PM And Was Duly Recorded as Instrument # 201103485 Of The Records Of San Miguel County

Witness My Hand And Seal Of Office
Melanie Y. Rivera
Deputy - GGUTIERREZ County Clerk, San Miguel, NM

e-Rec 9/16/11 San Miguel County

SPECIAL WARRANTY DEED

Federal National Mortgage Association

for consideration paid, grant to

Gilberto Juan Lorenzo Martinez, an unmarried man

whose address is HC 80, Box 263, Las Vegas, NM 87701 the following described real estate in San Miguel County, New Mexico:

LEGAL DESCRIPTION ATTACHED

GRANTEE HEREIN SHALL BE PROHIBITED FROM CONVEYING CAPTIONED PROPERTY TO A BONAFIDE PURCHASER FOR VALUE FOR A SALES PRICE OF GREATER THAN $42,000.00 FOR A PERIOD OF THREE MONTHS FROM THE DATE OF THIS DEED. GRANTEE SHALL ALSO BE PROHIBITED FROM ENCUMBERING SUBJECT PROPERTY WITH A SECUITY INTEREST IN THE PRINCIPAL AMOUNT OF GREATER THAN $42,000.00 FOR A PERIOD OF THREE MONTHS FROM THE DATE OF THIS DEED. THESE RESTRICTIONS SHALL RUN WITH THE LAND AND ARE NOT PERSONAL TO GRANTEE. THE RESTRICTION SHALL TERMINATE IMMEDIATELY UPON CONVEYANCE AT ANY FORECLOSURE SALE RELATED TO A MORTGAGE OR DEED OF TRUST.

with special warranty covenants.

SUBJECT TO Patent, reservations, restrictions, and easements of record and to taxes for the year 2011, and subsequent years.

Witness our hands and seals this 14 day of Sept, 2011

FEDERAL NATIONAL MORTGAGE ASSOCIATION CORPORATE SEAL 1938

Federal National Mortgage Association

BY: SHANNON NEWSOME
Name and Title of Agent ASST. VICE PRESIDENT

ACKNOWLEDGEMENT FOR CORPORATION

STATE OF Texas
COUNTY OF Dallas

This instrument was acknowledged before me this 14 day of Sept, 2011 by SHANNON NEWSOME (Name of Officer), ASST. VICE PRESIDENT (Title of Officer) of Federal National Mortgage Association (Name of Corporation Acknowledging) a _____ (State of incorporation) corporation, on behalf of said corporation.

My Commission Expires:

(Seal)

DIANE E. SANDERS
Notary Public,
State of Texas
Comm. Exp. 08-28-12

Notary Public

Special Warranty Deed (9-99)
FDNM0026.doc

Exhibit "A"

0.10 of an acre, more or less, within Block M of the Town, now the City of Las Vegas, San Miguel County, New Mexico, as shown on plat of survey by All Terrain Surveying Co., dated March 28, 2007, project no. 07-021, filed in the office of the San Miguel County Clerk, March 28, 2007 in Plat Book 56, page 33, document no. 1329.

EXHIBIT # 4

City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | lasvegasnm.gov

Madam Mayor Tonita Gurulé-Girón

November 5, 2018

Gilberto Juan Lorenzo Martinez
P. O. Box 2
Montezuma, NM 87731

Dear Mr. Martinez:

This is to formally give you notice that the Planning and Zoning Commission on October 29, 2018 recommended approval of your application to re-zone the property located at 338 Santa Ana Street, Las Vegas, New Mexico. The City Council will consider the Commissions' recommendation at their regular meeting to be held on Tuesday, November 20, 2018 at 6:00pm in the City Council Chambers, 1700 North Grand Avenue, Las Vegas, NM 87701.

Staff will initially present the item to the Council. At the end of the staff presentation, the Mayor will open the hearing. In all cases dealing with property issues, all persons, witnesses who wish to speak for or against the issue will have to be sworn in.

It is required that you or a representative be present at the hearing to answer any questions the Council have of your application. Failure to be present may result in your application being heard at a future meeting. Staff also encourages you to speak on your behalf when given the opportunity and if you choose, you may bring in other parties in support of your request.

If you have any questions, please feel free to contact me at (505) 426-3279 or via email at: mariaperea@lasvegasnm.gov.

Sincerely,

Maria D. Perea

Maria D. Perea
Planning & Zoning Coordinator

XC: Applicant File

NOTES

REFER TO WARRANTY DEED FILE IN BOOK 229, PAGE 6414 OF THE RECORDS OF SAN MIGUEL COUNTY, N.M.

BASIS OF BEARING WAS TAKEN FROM A PLAT OF SURVEY ENTITLED "PROPERTY SURVEY PREPARED FOR TONY & THERESA TRUJILLO", PREPARED BY EDWARD G. WINSTON Jr. N.M.L.S. No. 6999 DATED DECEMBER 15th, 1983 AS DRAWING No. 83327-18 AND UPDATED ON OCTOBER OF 1989 AS DRAWING No. 89162.

ALSO REFERENCE "IMPROVEMENT LOCATION REPORT FOR TONY M. & THERESA J. TRUJILLO", PREPARED BY ALL TERRAIN SURVEYING ON MAY 28th, 2002.

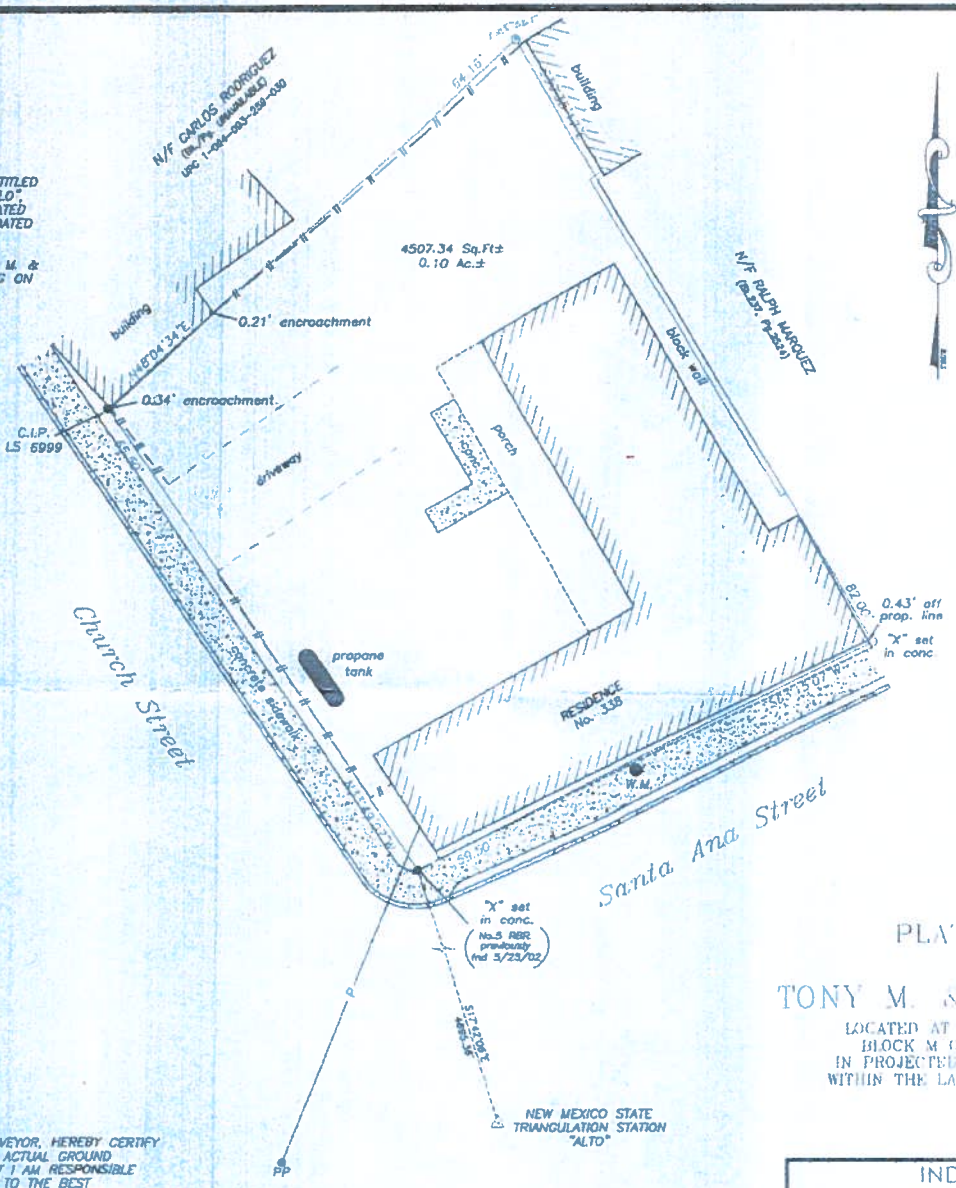
DOCUMENT No. 1329

STATE OF NEW MEXICO } SS
COUNTY OF SAN MIGUEL

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THE 29th DAY OF March A.D. 2007 AT 1:00 O'CLOCK P.M. AND DULY RECORDED IN PLAT BOOK 56 PAGE 33 OF THE RECORDS OF SAN MIGUEL COUNTY.

WITNESS MY HAND AND SEAL OF OFFICE
PAUL MAEZ
COUNTY CLERK, SAN MIGUEL COUNTY, N.M.

DEPUTY



LEGEND

- ○ = CAPPED REBARS SET (LS 10461)
- ● = POINTS FOUND
- ⊗ = POINTS NOT SET
- —//—//— = EXISTING BARBED WOOD FENCE

GRAPHIC SCALE

(IN FEET)
1 inch = 10 ft.

PLAT OF SURVEY FOR for TONY M. & THERESA J. TRUJILLO

LOCATED AT No. 338 SANTA ANA STREET, WITHIN BLOCK M OF TOWN, NOW CITY OF LAS VEGAS, IN PROJECTED SECTION 22, T.16N., R.16E., N.M.P.M., WITHIN THE LAS VEGAS GRANT, SAN MIGUEL COUNTY, STATE OF NEW MEXICO

UPC# 1-094-093-265-021

CERTIFICATE

I, LORENZO E. DOMINGUEZ, NEW MEXICO PROFESSIONAL SURVEYOR, HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT WAS PREPARED FROM AN ACTUAL GROUND SURVEY PERFORMED BY ME OR UNDER MY SUPERVISION, THAT I AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THIS BOUNDARY SURVEY PLAT AND THE FIELD SURVEY UPON WHICH IT IS BASED MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO, AND THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT. THIS IS A BOUNDARY SURVEY PLAT OF AN EXISTING TRACT OR TRACTS.

LORENZO E. DOMINGUEZ N.M.L.S. No. 10461 — DATE 3/28/07

All Terrain Surveying Co.
918 E Acequia Madre
Santa Fe, N.M. 87505
(505) 820-6627

INDEXING INFORMATION

OWNER(S): TONY M. & THERESA J. TRUJILLO
RECORDED DOCUMENT(S): WARRANTY DEED: BK.229, PG.6414
SECTION(S), TOWNSHIP(S), RANGE(S): PROJ.SEC.22, T.16N., R.16E., N.M.P.M.
SUBDIVISION(S): TOWN, NOW THE CITY OF LAS VEGAS
PROJECT No. 07-021

Book 56 Pg 33

EXHIBIT # 5

EXHIBIT # 6

Rural Health Cooperative Project

The rural health cooperative is a project of the El Valle Women's Collaborative.
The aim of the rural health cooperative project is to provide wrap around care services for women and their families. Currently, the cooperative consists of three providers; a Licensed Midwife, a Licensed Clinical Social Worker and a Dr. of Chinese Medicine. The following is a schedule and description of the services that would be provided at 338 Santa Ana St., Las Vegas, N.M. upon zoning approval.

Midwifery Services: Mondays, Wednesdays & Fridays by appointment

- Well woman care: annual exams, physicals, STI testing
- Family planning counseling
- Lactation services
- Prenatal Care
- Postpartum Care
- Newborn Care

Provider - Monica Larrea de Arellano LM, CPM

Mental Health Services: Tuesdays & Thursdays 9-5 pm by appointment

- One on one counseling services
- EMDR
- Life couching

Provider - Yvonne Sandoval LCSW

Chinese Medicine: Saturdays by appointment

- Acupuncture
- Chinese herbal consults

Provider - Norma Navarro DOM

EXHIBIT # 7

APPLICATION FOR A ZONE CHANGE - - An Application for a Zone Change request from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) for the purpose of leasing property as a medical building. Property is located at 338 Santa Ana Street, Las Vegas, New Mexico.

APPLICANT: Gilberto Juan Lorenzo Martinez
P. O. Box 2
Montezuma, NM 87731

1-094-093-265-021 - - A 0.10 of an acre, more or less, with Block M of the Town of Las Vegas, now the City of Las Vegas - - T16n, R16e, Section 22
Special Warranty Deed recorded on September 11, 2011, Inst. No. 201103485

OWNER: Gilberto Juan Lorenzo Martinez
P. O. Box 2
Montezuma, NM 87731

1. 1-094-093-240-027
Christopher Sena
2207 Church Street
Las Vegas, NM 87701

2. 1-094-093-242-036
Tammy Marie & Zachary Jerome De La Riva
2211 Church Street
Las Vegas, NM 87701

3. 1-094-093-259-032
Mia C. Yara
P. O. Box 1881
Las Vegas, NM 87701

4. 1-094-093-261-041
Edward P. Apodaca
4290 Country Club Rd., SE
Deming, NM 88030

5. 1-094-093-258-001
West Las Vegas Board of Education
179 Bridge Street
Las Vegas, NM 87701

6. 1-094-093-259-030
Carlos E. Rodriguez
2108 Church Street
Las Vegas, NM 87701

APPLICATION FOR A ZONE CHANGE - - An Application for a Zone Change request from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) for the purpose of leasing property as a medical building. Property is located at 338 Santa Ana Street, Las Vegas, New Mexico.

7. 1-094-093-264-034
Richard G. Griego
329 Bernalillo Street
Las Vegas, NM 87701

8. 1-094-093-267-037
Betty & John Griego
329 Bernalillo Street
Las Vegas, NM 87701

9. 1-094-093-268-023
Ralph Edward Marquez
3305 Luna Drive
Las Vegas, NM 87701

10. 1-094-093-271-025
Frances Marquez
334 Santa Ana Street
Las Vegas, NM 87701

11. 1-094-093-277-030
West Las Vegas Board
of Education
179 Bridge Street
Las Vegas, NM 87701

12. 1-094-093-270-015
Mary Rose H. Booker
63 Canada Village Road
Santa Fe, NM 87505

13. 1-094-093-272-012
Leroy H. & June J. Garcia
P. O. Box 95
Montezuma, NM 87731

14. 1-094-093-273-008
Edward C. Banas & Priscilla
I. Copeland Living Trust
6316 E. Lowden Road
Cave Creek, AZ 85331

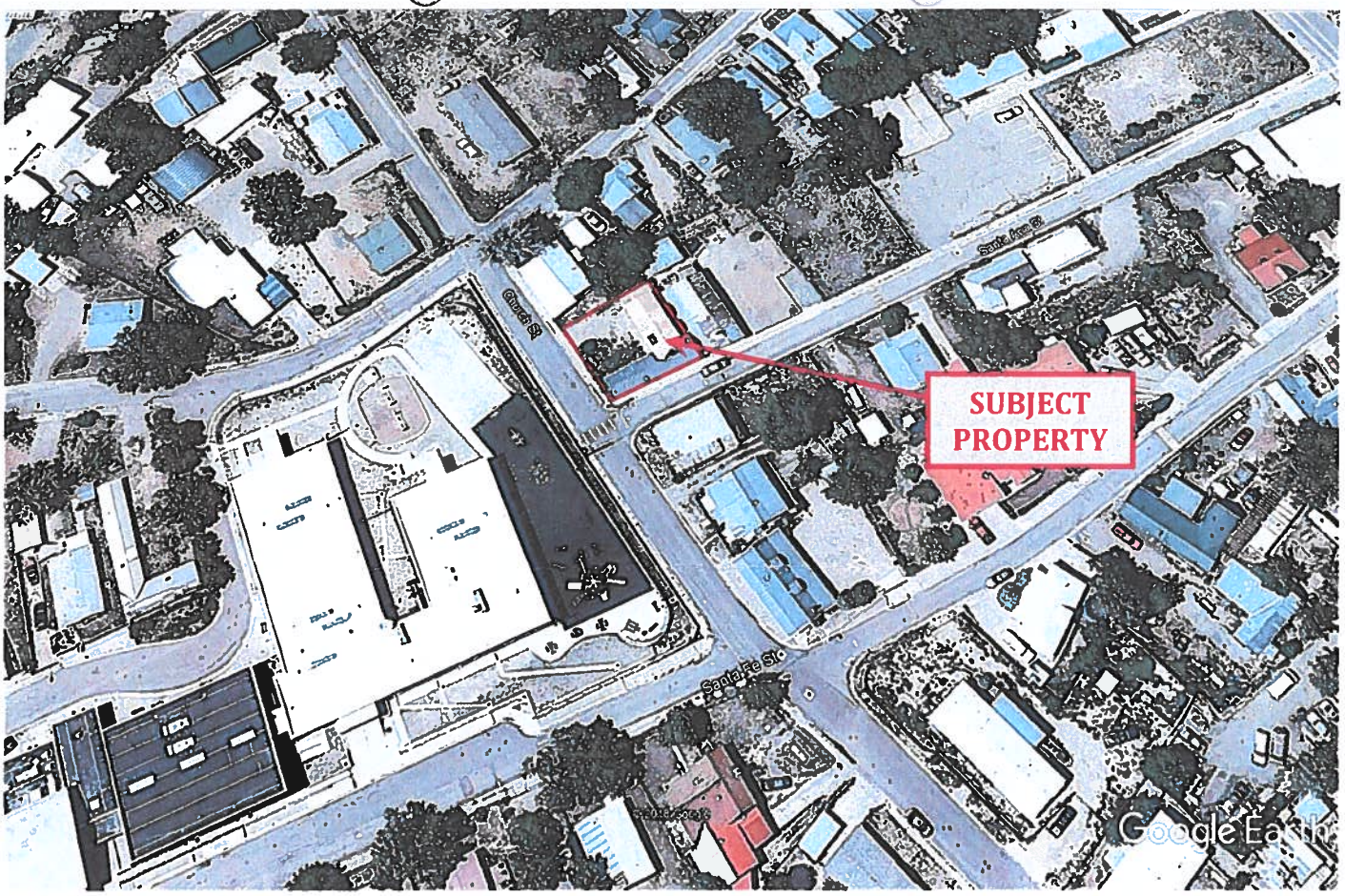
15. 1-094-092-278-015
James Ortiz
326 Santa Fe Street
Las Vegas, NM 87701

APPLICATION FOR A ZONE CHANGE - - An Application for a Zone Change request from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) for the purpose of leasing property as a medical building. Property is located at 338 Santa Ana Street, Las Vegas, New Mexico.

Gilberto Martinez
Page 3

ONLY ONE (1) LETTER SENT- - Both properties belong to West Las Vegas Board of Education

Above list was compiled on May 7, 2018 as per September 15, 2015 Map/Parcel Data provided by the San Miguel County Assessor's Office. List was verified as per list of current owners provided by the San Miguel County Assessor's Office on May 11, 2018. List was completed and verified by Maria D. Perea, Planning & Zoning Coordinator for Community Development Department.



The Board of Adjustment and Planning & Zoning Commission will hold a **PUBLIC HEARING** on Monday, October 29, 2018 at 4:00 pm, in the City Council Chambers, 1700 North Grand Avenue, Las Vegas, New Mexico, to consider an application for a **ZONE CHANGE** from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) for property located at 338 Santa Ana Street, Las Vegas, NM. Owner wants to change zoning on property as he is partnering with a rural healthcare cooperative to provide medical services in the area. Application submitted by Gilberto Juan Lorenzo Martinez (Applicant/Owner). The legal description for this property is on file at Community Development Department, 1700 North Grand Avenue, Las Vegas, New Mexico 87701.

This letter is notifying you because you own property within 100 feet (excluding public right-of-way) of the proposed **ZONE CHANGE**. You may appear at the hearing to enter your testimony in favor or in opposition to this request. The applicant aggrieved by the decision of the Board of Adjustment and Planning & Zoning Commission, may file a written notice of appeal.

If you require further information, please contact Maria Perea, Planning & Zoning Coordinator at (505) 426-3279.

CITY OF LAS VEGAS

COMMUNITY DEVELOPMENT DEPARTMENT
1700 NORTH GRAND AVENUE
LAS VEGAS, NEW MEXICO 87701

'NOT TO SCALE'

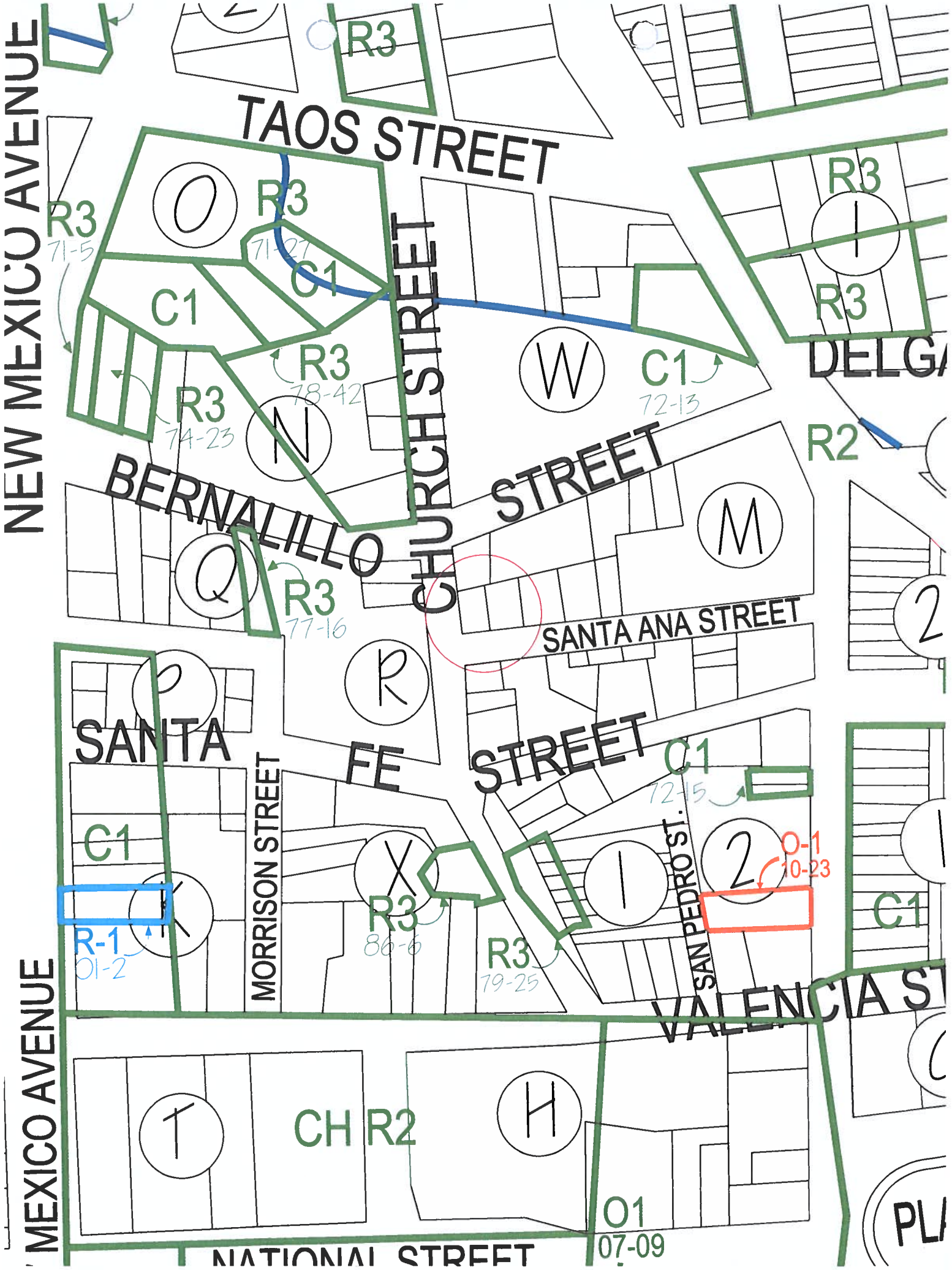

NEW MEXICO AVENUE
TAOS STREET
R3
71-5
R3
71-27
C1
C1
R3
78-42
R3
74-23
CHURCH STREET
W
C1
72-13
R3
R3
DELGA
R2
BERNALILLO STREET
M
Q
R3
77-16
SANTA ANA STREET
R
SANTA FE STREET
C1
72-15
C1
MORRISON STREET
X
R3
86-6
R3
79-25
SAN PEDRO ST.
O-1
10-23
C1
R-1
01-2
VALENCIA ST
MEXICO AVENUE
CH R2
H
O1
07-09
NATIONAL STREET

EXHIBIT # 8

EXHIBIT # 9

RECORD PROPER
ZONE CHANGE APPLICATION

Applicants/Owners: **Gilberto Juan Lorenzo Martinez**
P. O. Box 2, Montezuma, NM 87731

Location: **338 Santa Anna Street, Las Vegas, NM 87701**

Hearing Date: **Monday, October 29, 2018**

ACTION REQUESTED:
A recommendation for approval or disapproval of a Zone Change from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) for property located at 338 Santa Ana Street, Las Vegas, New Mexico 87701.

BACKGROUND:
Applicant/Owner, Mr. Gilberto Juan Martinez, is requesting a to change the zoning of said property as he is partnering with a rural healthcare cooperative to provide medical services to the area. Survey of property is attached and property is addressed as 338 Santa Ana Street, Las Vegas, New Mexico. The purpose of the zone change request is to have the healthcare cooperative provide care within a "home" like setting. The R-2 zone does not allow for commercial endeavors such as the proposed healthcare services.

EXHIBITS

Exhibit No.	Description (Document Name, date and number of pages)
1	Application to re-zone property located at 338 Santa Ana Street, Las Vegas, New Mexico, received on October 3, 2018 – 1 page
2	Letter of Intent to re-zone above property, not dated, but submitted on October 3, 2018 along with application – 1 page
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5	Plat of Survey for previous owners, Project #07-021 recorded at the San Miguel County Clerk's Office on March 29, 2007 in Plat Book 56, Page 33 - 1 page
6	Rural Health Cooperative Project description of services that will be offered, information on the providers and days when opened - 1 page
7	List of property owners within 100-feet of subject property sent notification via certified mail, copy of Assessor's Map (1" = 100'), Vicinity Map and Zoning map of subject property – 5 pages
8	Aerial photo of Subject property – 1 page
9	Copy of legal ad placed in the Las Vegas Optic on October 14, 2018 – 1 page
10	Staff Report on Application – 3 pages

EXHIBIT # 10

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

On October 29, 2018, the Las Vegas Planning and Zoning Commission considered an application submitted by Gilberto Juan Lorenzo Martinez, (Applicant/Owner) for an amendment to the City of Las Vegas Zoning Map. The proposed amendment would change the zoning of a parcel located within Block M, of the Town, now City of Las Vegas. Property is 4,507.34 square feet in size (0.10 acres ±) and located within T16n, R16e, Section 22, and known as 338 Santa Ana Street, Street, Las Vegas, New Mexico from an R-2 (Multi-Family Residential Zone) to an C-1 (Neighborhood Commercial Zone). The Commission having been presented with the record testimony hereby makes the following Findings of Fact, Conclusions of Law and Recommendation.

NOTICE

Notice for the Public Hearing before the Planning and Zoning Commission was published in the Las Vegas Optic on October 14, 2018, faxed to area media on October 16, 2018, mailed via certified mail on October 16, 2018 to property owners within 100 feet, and notice was posted on the external boundaries of the property.

APPLICATION

The applicant/owner, Gilberto Juan Lorenzo Martinez submitted an application for an amendment to the official zoning map of the City of Las Vegas. The application would change the zoning of property located at 338 Santa Ana Street, Las Vegas, New Mexico. The re-zone would allow owner to lease property to a rural healthcare cooperative to provide medical services in a "home-like" setting for pregnant women and their families. The healthcare cooperative consists of a midwife, a counselor and an acupuncturist.

LAND HISTORY

The property has a residence on it, which was recently restored by the owner. A copy of the survey is attached showing the building footprint.

TESTIMONY

Mr. Martinez has stated in the application that he would like to change the zoning from R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) because he wants to partner with the rural healthcare cooperative to provide the above services to the community. He is interested in being a part of the revitalization of the neighborhood in order to protect the historic home, but also provide needed services. The home will not be altered in any way, as the medical staff will provide services in a "home-like" environment. The three persons involved with the healthcare cooperative gave testimony about the services they would be providing, the days each of them would be at the location and other information.

Several citizens within the 100-foot radius required by the Ordinance were present at the meeting and testified against the zone change. All the citizens that testified at the meeting had concerns about:

- Additional traffic and congestion in the area of Church Street and Santa Ana Street, as there is an elementary school nearby;
- Safety issues because of the elementary school and Santa Ana Street being a one-way street, going from Church Street to Hot Springs Blvd., and being a yellow zone where no parking is allowed;
- Safety of the children walking to their homes or homes of grandparents who take care of them after school;
- Concerns about the clientele being served at this location, i.e. boarding home, patients from the NM Behavioral Health Institute and about it being a methadone clinic.

COMMISSION'S RECOMMENDATION

Based upon the Findings of Fact, the Commission made the following recommendation:

1. Motion was made to recommend approval of the amendment to the Zoning Map.

CONCLUSION OF LAW AND DECISION

Based upon the above findings of fact, the Commission makes the following Conclusions of Law and Decision:

1. Adequate notice, pursuant to § 450-104 of the Las Vegas Municipal Code was provided.
2. The Zoning Map amendment is in accordance with the Las Vegas Comprehensive Plan.
3. The Commission recommends to the City Council that the proposed Zone Change amendment be approved for property located at 338 Santa Ana Street, Las Vegas, New Mexico.

Signed this ____ day of _____, 2018

_____

Planning & Zoning Commission Chairperson

EXHIBIT # 11

Approval Form

Date Submitted: 11-5-18

Department Submitting: Community Development **Point of Contact:** Maria Perea

Documents to be reviewed: Ordinance No. 18-07, Zone Change from R-2 to C-1

Amount of Pages: 3 pgs

Upon Completion of review: contact Maria Perea

Deadline: 11 / 08 / 18

Comments:

If additional information is required prior to review, please advise and documentation will be provided.

Please mark according to how they should be reviewed by the following:

Approved / Disapproved:

☐ _____ _____
Tana Vega, Interim Finance Director Date

Approved /Disapproved:

☐ _____ _____
Esther Garduno-Montoya, City Attorney Date

Approved /Disapproved:

☐ _____ _____
Ann Marie Gallegos, Interim City Manager Date

Documents Picked Up: _____

By: _____ _____
Print Name Signature

CITY OF LAS VEGAS, CITY COUNCIL
ORDINANCE NO. 18-07

AN ORDINANCE AMENDING THE CITY OF LAS VEGAS OFFICIAL ZONING MAP FROM AN R-2 (MULTI-FAMILY RESIDENTIAL ZONE) TO A C-1 (NEIGHBORHOOD COMMERCIAL ZONE) FOR A 0.10 ACRES ± PARCEL LOCATED AT 338 SANTA ANA STREET, LAS VEGAS, NEW MEXICO AS REQUESTED BY GILBERTO JUAN LORENZO MARTINEZ, (APPLICANT/OWNER).

WHEREAS, the Mr. Gilberto Juan Lorenzo Martinez, as owner has applied for an amendment to the official zoning map for a parcel located within Block M, of the Town, now City of Las Vegas, New Mexico. Property is 4,507.34 square feet in size (0.10 acres ±) located within T16n, R16e, Section 22, and known as 338 Santa Ana Street, Las Vegas, New Mexico pursuant to provisions of the Las Vegas City Zoning Ordinance, and;

WHEREAS, on October 29, 2018 the City of Las Vegas Planning and Zoning Commission, following adequate public notice, held a public hearing to receive testimony concerning the amendment of the Official Zoning Map to re-zone above parcel (0.10 acres ±) located within T16n, R16e, Section 22, and known as 338 Santa Ana Street, Las Vegas, New Mexico from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) and on October 29, 2018 adopted a motion recommending approval of the proposed amendment.

WHEREAS, on November __, 2018, the Governing Body of the City of Las Vegas, following adequate public notice, held a public hearing to receive testimony concerning the recommendations of the Planning and Zoning Commission.

NOW, THEREFORE BE IT ORDAINED that the Governing Body of the City of Las Vegas, New Mexico, hereby **GRANTS** the amendment to the Official Zoning Map by re-zoning and changing the district classification of certain property known as a 338 Santa Ana Street and located within within T16n, R16e, Section 22, from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone), and more fully described as follows:

Lots 17, 18, 19 and 20, Block 20, of the Lopez, Sulzbacher & Rosenwald Addition to the El Dorado Town Company

BE IT FURTHER ORDAINED that the Governing Body of the City of Las Vegas, New Mexico, hereby adopts the following findings of fact upon which the Council's decision is based:

1. The boundaries of the zones established by the City's Ordinances, the classification of property herein, or other provisions of said Ordinances may be amended whenever public necessity, convenience, or general welfare require.

2. That duly public notice and public hearings were in accordance with the legal requirements and a site plan for the zone change has been provided which is acceptable to the City Council.
3. That property owner(s) disclose that property is within a flood zone area when property is sold and that elevation certificates will be required for the completion of property development.

PASSED, APPROVED AND ADOPTED ON THIS _____ DAY OF _____, 2018.

ATTEST:

_____
Casandra Fresquez, City Clerk

_____
Tonita Gurulé-Girón, Mayor

REVIEWED AND APPROVED
AS TO LEGAL SUFFIENCY ONLY

_____
City Attorney

NOTES

REFER TO WARRANTY DEED FILE IN BOOK 229, PAGE 6414 OF THE RECORDS OF SAN MIGUEL COUNTY, N.M.

BASIS OF BEARING WAS TAKEN FROM A PLAT OF SURVEY ENTITLED "PROPERTY SURVEY PREPARED FOR TONY & THERESA TRUJILLO", PREPARED BY EDWARD G. WINSTON Jr. N.M.L.S. No. 6999 DATED DECEMBER 15th, 1983 AS DRAWING No. 83327-18 AND UPDATED ON OCTOBER OF 1989 AS DRAWING No. 89162.

ALSO REFERENCE "IMPROVMENT LOCATION REPORT FOR TONY M. & THERESA J. TRUJILLO", PREPARED BY ALL TERRAIN SURVEYING ON MAY 28th, 2002.

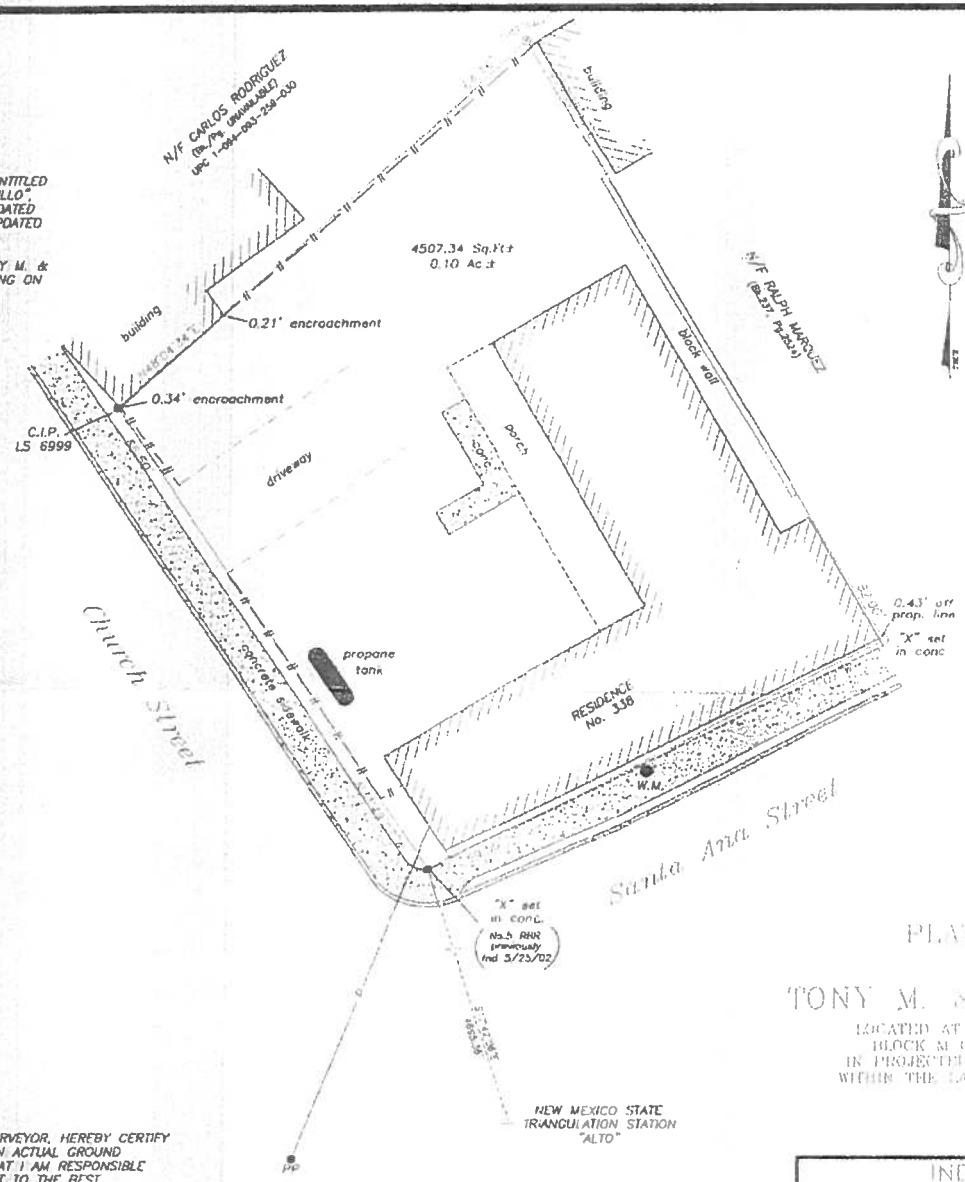
DOCUMENT No. 1329

STATE OF NEW MEXICO }
COUNTY OF SAN MIGUEL } ss

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THE 29th DAY OF March A.D. 2007 AT 1:00 O'CLOCK 8 m. AND DULY RECORDED IN PLAT BOOK 56 PAGE 33 OF THE RECORDS OF SAN MIGUEL COUNTY.

WITNESS MY HAND AND SEAL OF OFFICE
PAUL MAEZ
COUNTY CLERK, SAN MIGUEL COUNTY, N.M.

By: [signature]
DEPUTY



LEGEND

- ○ = CAPPED REBARS SET (LS 10461)
- ● = POINTS FOUND
- " = POINTS NOT SET
- —//—— = EXISTING BARRED WOOD FENCE

GRAPHIC SCALE

(IN FEET)
1 inch = 10 ft.

PLAT OF SURVEY FOR
for
TONY M. & THERESA J. TRUJILLO

LOCATED AT No. 336 SANTA ANA STREET WITHIN BLOCK M OF TOWN, NOW CITY OF LAS VEGAS, IN PROJECTED SECTION 22, T16N., R16E., N.M.P.M., WITHIN THE LAS VEGAS GRANT, SAN MIGUEL COUNTY, STATE OF NEW MEXICO.

UPC# 1-094-093-265-021

CERTIFICATE

I, LORENZO E. DOMINGUEZ, NEW MEXICO PROFESSIONAL SURVEYOR, HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT WAS PREPARED FROM AN ACTUAL GROUND SURVEY PERFORMED BY ME OR UNDER MY SUPERVISION, THAT I AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THIS BOUNDARY SURVEY PLAT AND THE FIELD SURVEY UPON WHICH IT IS BASED MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO, AND THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT. THIS IS A BOUNDARY SURVEY PLAT OF AN EXISTING TRACT OR TRACTS.

Lorenzo E. Dominguez
LORENZO E. DOMINGUEZ N.M.P.S. No. 10461

3/29/07
DATE

All Terrain Surveying Co.
918 E Acequia Madre
Santa Fe, N.M. 87505
(505) 820-6627

INDEXING INFORMATION

OWNER(S): TONY M. & THERESA J. TRUJILLO
RECORDED DOCUMENT(S): WARRANTY DEED, BK.229, PG.6414
SECTION(S), TOWNSHIP(S), RANGE(S): PROJ SEC 22, T16N., R16E., N.M.P.M.
SUBDIVISION(S): TOWN, NOW THE CITY OF LAS VEGAS
PROJECT No.: 07-021

Book 56 Pg 33

Regular or Special
CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/7/18 **DEPT: Human Resource** **MEETING DATE**: 11/20/18

ITEM/TOPIC: IAFF Local 4625 Agreement

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of International Association of Fire Fighters (IAFF) Local 4625 Agreement.

BACKGROUND/RATIONALE: The City entered into contract negotiations with IAFF for purposes of negotiating a new contract. The International Association of Fire Fighters Local 4625 has ratified and approved collective bargaining agreement between the City of Las Vegas and the Las Vegas NM Professional Fire Fighters Association.

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION: *Management Team recommends approval of contract.*

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULÉ-GIRÓN
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR (PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

ESTHER GARDUNO MONTOYA, CITY ATTORNEY (ALL CONTRACTS, ORDINANCES AND RESOLUTIONS MUST BE REVIEWED)

Revised 9/18

International Association of Fire Fighters
IAFF Local 4625
122 Sheridan Rd. Las Vegas, NM 87701
Joseph J Garofalo President/Treasurer
Antonio Gonzales Jr. Vice President
John Sotres Secretary

10-9-2018

To: Mrs Ann Marie Gallegos, Interim City Manager
City Of Las Vegas
1700 North Grand Ave.
Las Vegas, NM 87701

From: Joseph J. Garofalo
IAFF Local 4625, President

As per the agreement between the City of Las Vegas and Local IAFF 4625 members, motion for ratification was passed and conducted on the 9th Day of October at 1500 hours between majority votes of the IAFF 4625 bargaining unit.

Approved by,

Joseph J. Garofalo, IAFF Local 4625 President
(505) 470-3638
jgarofalo@lasvegasnm.gov

Antonio Gonzales Jr, Vice President
(505) 617-0623
antonio@lasvegasnm.gov

Cc. Billy Montoya, Fire Chief

MEMORANDUM

TO: **DARLENE ARGUELLO, Human Resource Department**

FROM: _____

ESTHER GARDUNO MONTOYA, CITY ATTORNEY

RE: **Firefighters Contract**

DATE: **November 6, 2018**

I have reviewed the attached Agreement between the City of Las Vegas and the Las Vegas Firefighters Association. I approve, as to legal sufficiency.

IAFF

International Association of Fire Fighters

THE LAS VEGAS, NEW MEXICO PROFESSIONAL

FIRE FIGHTERS ASSOCIATION

IAFF Local 4625

and

The City of Las Vegas

_____ through June 30, 2020

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****Page numbers will change again once contract is formatted and finalized and redline is gone**

PREAMBLE

This Agreement is entered into by and between the City of Las Vegas, New Mexico, hereinafter referred to as the "Employer", and the Las Vegas New Mexico Firefighters Association, Local #4625, International Association of Fire Fighters, hereinafter referred to as the "Union". For the purposes of this Agreement, "employee" shall mean any City Fire Department employee covered by this Agreement pursuant to Article 1, herein.

The purpose of this agreement is to maintain harmonious relations between the Employer and the Union, to provide terms and conditions of employment for employees covered hereunder, and to provide a means of amicable and equitable resolution of any and all differences or grievances which may arise under the provisions of this Agreement, all of which the parties hereto believe and affirm will assure the welfare and benefit of the people of the City of Las Vegas.

ARTICLE 1 RECOGNITION

The employer recognizes the Union as the sole and exclusive representative in all matters concerning wages, hours and other terms and conditions of employment for all employees in the bargaining unit **in the positions of Firefighter and Engineer.**

The bargaining unit is established per the City of Las Vegas Labor Management Relations Board in accordance with the Public Employee Bargaining Act NMSA Chapter 10 Article 7E.

ARTICLE 2 DISCRIMINATION

The parties to this Agreement agree not to discriminate against any employee because of race, color, religion, sex, national origin, marital status, ~~membership in social and fraternal~~ **membership or non-membership in the union**, age, sexual orientations, disability, veteran status, or any other group protected by local, state or federal law. There shall be no discrimination, interference, restraint, or coercion by the Employer against any employee for lawful activity on behalf of, or membership in the Union **on non-work time and unpaid status**.

ARTICLE 3 COMMUNICATION

A. In the interest of creating and maintaining positive, productive, open and honest, communication between labor and management, the parties agree to establish a process for the exchange of information.

B. Should the Employer determine that it is necessary to change, modify or replace existing departmental rules, regulations, policies or procedures affecting bargaining unit members, the Chief or their designee shall advise the Union President and provide them with a copy of the proposed changes. Within ten (10) business days, the Union President will advise the Fire Chief if the Union wishes to meet and discuss the proposed changes.

C. Formulation of a new Fire Chief's Directives, Department SOPs/SOGs, Job Specifications or other department rules and regulations shall be a mandatory topic of discussion of the City Safety Committee.

D. The Employer will provide each member of the bargaining unit a copy of the current Las Vegas Fire Department Handbook. Management will provide any changes or updates of material contained in the Fire Department Handbook to each employee. It is the responsibility of each employee to keep his or her own handbook up to date when provided with changes or updates. Changes shall be made no later than June 1st for the upcoming fiscal year. No other changes will be allowed after that date.

ARTICLE 4 PAYROLL DUES DEDUCTIONS

Union Dues in the amount certified by the Union Treasurer will be deducted by the employer from the bargaining unit member's paycheck and deposited in to the bank account specified by the Union in writing. Initial payroll deductions will be stipulated in writing by each individual member. Any changes in dues deductions will be certified in writing by the Union Treasurer. A copy of the Union's By-Laws and signature cards from the members will be made available upon request. **Changes shall be made once each fiscal year by written notification to the City's Human Resource office no later than June 1st for the upcoming fiscal year. No other changes will be allowed after that date.**

ARTICLE 5 BULLETIN BOARDS

The Employer shall provide bulletin board space at each fire station where bargaining unit members are staffed for the exclusive use of the Union. The bargaining unit members will provide the board and agree to post only appropriate professional material on the bulletin board. **Any posting of inappropriate material or nature will result in loss of the privilege to post on the board.**

ARTICLE 6 MANAGEMENT RIGHTS

The Employer's rights shall include, but are not limited to the following:

A. To direct and supervise all operations, functions and the work of employees;

B. To determine the details of accomplishing shift staffing requirements, to create, abolish or eliminate or reorganize work units;

C. To determine the need for, and the qualifications of, new employees, and to determine the qualifications for employees considered for transfer and promotions;

D. To determine the nature and content of personnel examinations;

E. To hire, promote, assign, transfer, discipline, demote, suspend, discharge or terminate employees;

F. To take actions as may be necessary to carry out the mission of the employer in emergencies; and

G. The Employer retains the rights and responsibilities not specifically limited by this agreement or the Public Employees Bargaining Act.

ARTICLE 7 UNION RIGHTS

A. The Union has the right to elect and/or to appoint its own executive officers, stewards, and trustees. **Union President must provide a list of appointees by July 1st of each year and within five (5) days of any changes along with their contact information and scope of authority and that only the people on the list will be recognized as union officers, stewards and trustees.**

B. Employees may be granted vacation leave or leave-without-pay for Union business, with five (5) days notice.

C. The Employer shall allow the Union President, other Union Officers, or union members designated by the President to attend, on paid status, meetings ~~agreed to by both parties.~~ **in which the Employer requests the assistance of the Union President.**

~~D. The Union President or their designee shall be afforded eight (8) hours Union paid administrative leave per week during normally scheduled work hours to meet with bargaining unit members and to conduct any activities he/she believes are in the best interest of administering this Agreement. The Union President or their designee shall request such leave on the appropriate leave form and shall provide at least five (5) days prior notice to their immediate supervisor. Union administrative leave cannot be accrued for future use.~~

E. The Fire Department training/meeting rooms will be made available with proper notice for Union monthly membership meetings, Executive Board meetings, and special meetings. Employees who are on-shift will be permitted to attend such meetings provided that departmental operations are not impacted. Such meetings will be scheduled at times that will not hinder normal operations. The person or persons on duty during such meetings will respond to all emergency calls immediately upon dispatch.

ARTICLE 8 JURY DUTY

The City's current policy on Jury Leave shall apply to all bargaining unit members

ARTICLE 9 VACATION LEAVE

Bargaining Unit employees will accrue vacation leave in accordance with City Policy.

ARTICLE 10 FAMILY AND MEDICAL LEAVE

The City's policy regarding Family and Medical Leave Act in accordance with Federal Law shall apply to bargaining unit members.

ARTICLE 11 LEAVE TO VOTE

A. Bargaining Unit employees will be granted leave to vote in accordance with State and Federal Law.

B. The Fire Chief shall schedule leave to vote and may require bargaining unit members to show proof of voter registration.

C. Employees released from work to vote shall proceed directly to their precinct polling station to vote, and shall return to their duty station immediately after casting the ballot.

~~ARTICLE 12 LEAVE FOR CITY BUSINESS~~

~~Leave with pay may be authorized for an employee to attend official meetings where the good of the City service is involved or to conduct City business at a location other than the employee's normal work station. Any use of City time by Union Officers or members for labor/management issues or purposes requires the prior approval of the Fire Chief (or his/her designee).~~

ARTICLE ~~13~~ 12 SENIORITY

A. Seniority for the purpose of this contract shall be defined as length of continuous unbroken service within the fire department commencing upon the employee's date of hire. Continuous unbroken service shall not be considered to have been interrupted by periods of approved leave-without-pay or an approved temporary leave of absence.

B. Time-in-position seniority is defined as the length of continuous service an employee has in their current classification/job position. The employee's date of promotion begins as the date of employment in the current classification/job position. Voluntary reassignment, voluntary transfer, voluntary promotion or termination breaks time-in-position seniority.

C. Whenever two people have the same date of hire, then the tie will be broken by the use of lottery numbers, the lowest number becoming the most senior employee.

ARTICLE ~~14~~ 13 INSURANCES

Bargaining unit employees will be eligible for the same insurance benefits as offered to other City employees at the current percentages applicable to premium payments. Those premiums currently are:

Health Insurance:	Employer pays 75% Employee pays 25%
Dental Insurance:	Employer pays 50% Employee pays 50%
~~Life and Disability Insurance:~~	~~Employer pays 75% Employee pays 25%~~

Life Insurance:	**Employer pays 100%**
Disability Insurance:	**Employee pays 100%**
Vision Insurance:	Employer pays 50% Employee pays 50%

ARTICLE ~~15~~ 14 LICENSURE

The City of Las Vegas will continue to offer refresher training, however, it shall remain the responsibility of bargaining unit employees to maintain EMT licensure in accordance with the position requirements and law at a level of EMT-B or higher. The City of Las Vegas shall pay for all assigned refreshers (one (1) per year) and may make available additional continuing education hours for re-licensure.

ARTICLE ~~16~~ 15 UNIFORMS

A. Uniforms will be replaced as determined by the Fire Chief.

B. Bargaining unit employees shall be responsible for maintenance, upkeep, and appearance of their uniforms. Uniforms are subject to inspection by the Fire Chief.

ARTICLE ~~17~~ 16 UNIFORM ALLOWANCE

Uniform allowance of $400.00 annually, paid in two installments of $200.00. Bargaining Unit employees will receive one payment of $200.00 in July and one payment of $200.00 in January of each fiscal year. Employees shall net $200.00 per payment. Uniform Allowance payments will be itemized on employees' pay checks.

ARTICLE ~~18~~ 17 PHYSICAL FITNESS

A. The firefighting profession requires each member to maintain a high degree of physical fitness for the safety of the individual and the citizens they serve. ~~It is agreed that firefighters will establish a maintenance or improvement path program for their personal fitness.~~ **It is agreed that all personnel will participate in the wellness program in order to improve on personal fitness and maintain efficient job performance.**

~~B. Firefighters shall be allowed up to one and one-half (1 ½) hours per shift to maintain their physical conditioning at the City Recreation Center during the normal operating hours of the City Recreation Center. Firefighters shall also be permitted to use the City Recreation Center during normal operating hours of the City Recreation Center on non-duty days at no cost to the employee. Allotted time to work out will begin once firefighters have left the station in route to the Recreation Center and will end when they have arrived back at their respective station. The team will participate as a unit; which is defined as Station 1 or Station 2. Each station will not work out at the same time. All equipment related to physical fitness at the Recreation Center may be used; with the exception of free weights, while firefighters are on duty. Firefighters~~

~~participating in the physical fitness program agree that they will respond from the Recreation Center upon receiving calls in appropriate attire.~~

B. Firefighters shall be allowed up to two (2) hours daily to maintain physical conditioning at the Abe Montoya Recreation Center or Station Two (2) fitness area. These two hours shall include the changing of uniforms and personal hygiene/grooming. Firefighters shall also be permitted to utilize the Recreation Center on non-duty days at no cost to the employee. All equipment related to physical fitness at the Recreation Center and Station Two (2) fitness area may be utilized; with the understanding that any and all safety features of each machine must be in place and functioning. When free weights are utilized on-duty, a spotter must be in place and weight shall not exceed 225 pounds. Upon receiving any emergency call, firefighters shall respond from either location in appropriate attire and PPE.

~~C. The City will commit to creating a Physical Fitness Policy to be run by a Fitness Technician.~~

C. The City will commit to creating a Physical Fitness Policy ran by the appointed Wellness Coordinator within the Fire Department. The Union will also work in good faith with the Wellness Coordinator to follow the guidelines set forth in the aforementioned Physical Fitness Policy.

D. All personnel must wear a presentable LVFD t-shirt while working out on duty. This will ensure professional representation of the department and also identify each firefighter on duty.

ARTICLE ~~19~~ 18 LABOR MANAGEMENT COMMITTEE

A. If during the term of this agreement the parties agree there is a need for a Labor Management Committee such a committee shall be formed as follows:

1. The committee shall meet at least once per quarter at mutually agreed upon times and places.
2. The Association and the Employer shall each appoint two members unless otherwise agreed.
3. The Committee shall be free to address any topic of mutual concerns to the parties.
4. It is understood and agreed that the outcome of the meetings shall not be considered as constituting a binding agreement of the parties unless specifically so stated in writing.
5. This committee is not empowered to negotiate or change the collective bargaining agreement.

B. The Fire Chief or his designee, and a President of the Association may meet as needed at mutually agreed upon times and places to discuss possible conflicts or problems that may arise and try to resolve them at the lowest possible level. By mutual agreement items may be referred to the Labor Management Relations Committee should such a committee be formed.

ARTICLE ~~20~~ 19 CITY SAFETY COMMITTEE

A. The purpose of the Safety Committee is to review policies and recommend modifications as necessary to the City Manager. The committee shall meet bi-annually or as required by management.

B. In accordance with the City's Safety and Health Policy, the Safety Committee shall include two bargaining union members.

C. The IAFF President shall make his/her appointments of the two bargaining members for the Safety Committee.

D. Union members may attend safety meetings on paid status.

ARTICLE ~~21~~ 20 DISCIPLINARY ACTION

A. Employees may be disciplined for just cause. A progressive discipline process shall be utilized, if appropriate. The level of discipline shall depend on the seriousness of the infraction, and the employee's previous work/discipline record. Based on the severity of the action, an employee may be subject to discipline up to and including termination.

B. Types of discipline
   a. Letter of Reprimand
   b. Suspension from work without pay
   c. Demotions
   d. Dismissal/Discharge for cause

C. An employee against whom disciplinary action is contemplated will be provided with written charges and afforded the opportunity to respond to the charges in writing within three (3) days of receipt of such notice. An employee may also request a pre-disciplinary meeting with the Chief or designee, within the three (3) day period, for any disciplinary action involving suspension, demotion, or termination. The pre-disciplinary meeting will provide the employee an opportunity to present information regarding the situation which gave rise to the contemplated disciplinary action. Following the pre-disciplinary meeting, the Chief or designee will inform the employee whether he will forward a recommendation of suspension, demotion, or termination to the City Manager. Written charges will be presented to the employee once management believes it has sufficient information to proceed with charges against the employee.

D. Should the Chief forward a recommendation for suspension, demotion, or termination to the City Manager, an employee shall have the right to a pre-disciplinary meeting with the City Manager. The meeting will afford the parties an opportunity to discuss the contemplated disciplinary action and provide the employee an opportunity to provide information regarding the situation which gave rise to the contemplated action. The City Manager shall provide the employee with a written decision within fourteen (14) calendar days following the pre-disciplinary meeting.

E. No pre-disciplinary meetings shall be required prior to the issuance of a written reprimand.

F. Disciplinary action as defined in B. above may be appealed by the affected employee through the grievance and appeal process as provided in the Agreement under Article 21.

G. If the appeal of the disciplinary action is not satisfactorily resolved at the City Manager level, it may be submitted to final and binding arbitration as per Article 21 of this agreement.

H. If no appeal is requested, the disciplinary action shall be final subject to review by the Human Resource Director/Officer and is subject to the approval and signature of the City Manager.

ARTICLE ~~22~~ 21 DISCIPLINARY APPEAL, GRIEVANCE AND ARBITRATION PROCEDURES

A. A Grievance is defined as a written formal complaint alleging a violation, misapplication, or misinterpretation of any of the provisions of this Agreement or City Personnel Rules and Regulations. Appeal of disciplinary actions as defined in Article ~~21~~ 20 shall also be accomplished through this process. Employees are obligated to attempt to resolve a grievance at the lowest level possible prior to filing a written grievance at Step 1 of this process.

B. Grievances/appeals shall be filed by the individual employees or by the exclusive representative on behalf of an individual employee or a group of employees. The grievance/appeal shall be signed by the aggrieved employee or employees and/or the Union representative.

C. An individual employee may present a grievance/appeal under the provisions of this Article without the intervention of the Union and have the grievance/appeal adjusted as long as (1) the adjustment is consistent with the terms of this Agreement, and (2) the employee is responsible for all expenses incurred at any hearing or meeting on a grievance/appeal brought by the individual employee. The Union shall be afforded the opportunity to be present and make its views known. In a situation where the employee has elected not to use the Union's services, and is requesting arbitration the employer and the employee shall deposit $3000.00 each in an escrow account for the payment of arbitration.

D. The written grievance/appeal shall include:

   a. The employee/grievant's name, job, title, department;
   b. The Union representative/steward's name, address and telephone number; if applicable.

c. The Article(s) of this Agreement or section of the Personnel Rules and Regulations alleged to have been violated;
d. The date the incident or violation occurred;
e. The Management employee, if any, against whom the action is filed;
f. A description of the alleged violation providing more than just the Article or Section identification.
g. If the phrase "to be made whole" is used in the relief requested, the grievant shall specify what specific relief is desired. The relief requested shall include a specific statement describing the grievant's settlement request; and
h. The signature and date of the grievant and the Union representative.

E. A written grievance/appeal shall be presented to the employee's Immediate Supervisor within ten (10) working days of the action that gave rise to the grievance or appeal, or of the date the employee became aware of the action. If the grievance/appeal is not resolved within ten (10) working days of the date of the grievance/appeal was filed with the immediate supervisor, the grievance/appeal may be advanced to the Fire Chief or designee.

F. If the grievance/appeal is not resolved within ten (10) working days of the date of the grievance/appeal was filed with the Fire Chief or designee, the grievance/appeal may be advanced to the City Manager.

G. If the issue is not resolved at the Fire Chief or designee level, the grievance/appeal may be advanced to the City Manager by presenting the written grievance/appeal to the City Manager within ten (10) working days of the filing with the Department Head. This means within ten (10) working days of the initial filing of the grievance/appeal with the Department Head. The parties will mutually agree on a date, time, and place to meet and attempt to resolve the grievance/appeal. If the issue is not resolved within ten (10) working days of the filing with the City Manager, the grievance/appeal may be advanced to arbitration.

H. The grievance/appeal is advanced to arbitration by presenting such written notice to the City Manager within fifteen (15) working days of the initial filing at the City Manager level.

I. Within ten (10) working days of the filing of the written notice of advancement to arbitration, a request for an unrestricted list of arbitrators from the Federal Mediation and Conciliation Service (FMCS) shall be submitted by the parties. The request for this list of arbitrators shall be signed by both parties.

J. Within ten (10) working days of receipt of the arbitrator list, the parties shall meet to select an arbitrator.

K. The selection of the arbitrator shall be accomplished by the parties alternating striking of names until only one name remains. The remaining name shall be the arbitrator. Who strikes the first name is determined by the flip of a coin.

L. The Arbitrator shall render a final and binding decision. This decision of the arbitrator is subject to judicial review in accordance with the New Mexico Uniform Arbitration Act. The parties shall share the cost of the arbitrator equally.

M. The Arbitrator's duties, responsibilities, and limitations are governed by the City's Labor Management Relations Ordinance.

N. This is the only internal grievance and appeal process available to bargaining unit employees.

O. Working day is defined as days that the administrative offices of the City are open for business. Any deadline that falls on a day that the administrative offices of the City are not open for regular business shall extend into the next day that the City Administrative Offices are open for business.

P. Waiver of Grievance. If the Union/bargaining unit member fails to proceed to successive levels of the grievance procedure within the time period specified, they shall be conclusively deemed to have waived and abandoned the grievance. If the employer fails to respond to a filing step, the grievance will be automatically advanced to the next step.

Q. Expiration. If any eligible employee terminates or is terminated from employment with the City for any reason, any grievance previously filed by the employee who is in process at the time of termination shall also be terminated with the exception of any pay, benefit, or dismissal grievance.

ARTICLE ~~23~~ 22 SAFETY

Safety is an integral part of the responsibilities of all employees. The employer will continue to provide healthful and safe working conditions. Employees shall comply with such rules, regulations and practices as may be prescribed for the conduct of employees in order to provide a safe work environment, in accordance with the City's Safety and Health Policy. The employee shall notify his/her immediate supervisor of any unsafe or hazardous working conditions. The employer will take appropriate action to correct unsafe or hazardous working conditions as required by law. The Employer, through the Safety Office, will provide safety training on an as needed basis.

ARTICLE ~~24~~ 23 SAFETY EQUIPMENT

A. The Employer shall provide all necessary safety equipment to employees in the fire department. The equipment to be supplied shall include fire fighter turnout gear, boots, gloves, hearing protection and goggles, eye protection, splash protection, masks and other equipment designed for blood and airborne pathogen protection, Self-Contained Breathing Apparatus (SCBA) fitted face mask, structural fire helmet, face shield and nomex hood, steel-toed safety boots, wildland firefighting boots, wildland pants and

jacket/shirt, wildland gloves, wildland helmet, goggles, radio harness, wildland pack and safety flares.

B. All issued gear shall be compliant with the current NFPA 1971, 1972 and New Mexico State OSHA standards. All issued gear shall be tracked and inventoried on a regular basis. Replacement shall be on an as-needed basis.

C. All respiratory protection equipment shall meet and be maintained in a manner consistent will all applicable NFPA and New Mexico State OSHA standards.

ARTICLE ~~25~~ 24 HOURS OF WORK

Assigned shifts for bargaining unit employees will be forty-eight (48) hours on and ninety-six (96) off ~~through a six (6) month trial period beginning January 7, 2017~~. Overtime will be paid in accordance with FLSA **on a 14-day pay cycle, the overtime threshold for this work period will be 106 hours.**

~~Management and Union agree to collaborate in good faith to develop and implement a strategy to transition to the new work schedule.~~

~~Days of Cycle: 1 2 3 4 5 6 7 8 9 10 11 12 13 14~~
~~Shifts: A B B C C A A B B C C A A B~~

~~Days of Cycle: 15 16 17 18 19 20 21 22 23 24 25 26 27 28~~
~~Shifts: B C C A A B B C C A A B B C~~

Employees covered by this agreement shall work a 48 hour on duty and 96 hour off duty shift in accordance with the following rotating schedule below.

Days of Cycle:
Shift:

1	2	3	4	5	6	7	8	9	10	11	12	13	14
*A	*B	B	*C	C	A	A	B	B	C	C	A	A	B
1	2	3	4	5	6	7	8	9	10	11	12	13	14
B	C	C	A	A	B	B	C	C	A	A	B	B	C
1	2	3	4	5	6	7	8	9	10	11	12	13	14
C	A	A	B	B	C	C	A	A	B	B	C	C	A
1	2	3	4	5	6	7	8	9	10	11	12	13	14
A	B	B	C	C	A	A	B	B	C	C	A	A	B
1	2	3	4	5	6	7	8	9	10	11	12	13	14
B	C	C	A	A	B	B	C	C	A	A	B	B	C
1	2	3	4	5	6	7	8	9	10	11	12	13	14
C	A	A	B	B	C	C	A	A	B	B	C	C	A

Shifts shall commence at 0900 and continue through to 0900, consisting of forty-eight (48) hours on duty.

***The team beginning their 2nd day of a 48hr shift on the 1st day of a 14-day pay cycle will be scheduled for 120 hours of work. (i.e. A shift on 2nd row, 1st column)**

***The team beginning their 48hr shift on the 2nd day of the 14-day pay cycle will be scheduled for 120 hours of work. (i.e. B shift on 2nd row, 2nd column)**

***The team beginning their 48hr shift on the 4th day of a 14-day pay cycle will be scheduled for 96 hours of work. (i.e. C shift on 2nd row, 4th column)**

ARTICLE ~~26~~ 25 SHIFT EXCHANGE

For the period of this Agreement the parties shall recognize the City of Las Vegas Fire Department Shift Exchange Policy dated 2/13/2009.

ARTICLE ~~27~~ 26 DRUG AND ALCOHOL TESTING

The parties agree that substance abuse will not be tolerated in the Fire Department. In recognition of the need to maintain a drug and alcohol free workplace the employer has adopted a drug and alcohol policy (Resolution 04-03). Management may at any time amend this policy; however, the employer agrees to submit to the Safety Committee any proposed amendments to the policy. Management may consider any recommendations from the Safety Committee.

ARTICLE ~~28~~ 27 VACANCIES

Vacancies will be announced as per the City of Las Vegas Code Book Chapter 66. Personnel Rules and revisions thereof.

ARTICLE ~~29~~ 28 PRIVATIZATION AND CONTRACTING OUT

A. The Employer agrees that prior to privatizing or contracting out bargaining unit positions, the Union will be allowed to submit input in writing no later than ten (10) working days, to the office of the City Manager, with a copy delivered to the Human Resources Department. A written response shall be given to the Union no later than ten (10) business days.

B. The Employer agrees that it will formally inform the Union of any and all pending changes which will result in the loss of full time equivalents or bargaining unit positions upon receiving information of such pending changes.

ARTICLE ~~30~~ 29 PERSONNEL RECORDS

A. The employees' Official Personnel files will be maintained in the Human Resources Office. Employees, or their designee, by written authorization, may review the employees' files by appointment during the regular business hours of the Human Resources Office. Such review shall not interfere with the employees' work time.

B. Employees may obtain copies of material in their personnel file. A fee of $1.00 per copy up to ten (10) pages will be charged. Copies beyond ten (10) pages will be provided at $0.50 per page.

C. Employees may submit a rebuttal to any material that is placed in the employees' personnel file. Such rebuttal must be submitted within thirty (30) calendar days of the effective date of the material in question.

D. Employees may request in writing that letters of commendation or certificates of completion of training be placed in their file. A Human Resources Officer shall determine if such material appropriate for placement in the employee's file.

E. The Human Resources Personnel File is the official employment history of the employee and shall not be purged except by order of an arbitrator or judge of competent jurisdiction.

ARTICLE ~~31~~ 30 PERA

City and Employee contribution rates for PERA shall remain in effect for the duration of this agreement.

ARTICLE ~~32~~ 31 COMPENSATION

A. Effective the first full pay period after July 1, ~~2016~~ **2018**, or following ratification and signature of the Agreement, or resolution of impasse, whichever is later, all bargaining unit employees will receive a ~~thirty-five cent ($.35)~~ **seventy-five cent ($0.75)** increase to the employee's regular hourly rate of pay **and a 1.5% annual increase thereafter subject to negotiations.**

ARTICLE 32 EDUCATIONAL PAY

A. The Union and the City recognize the value of higher education and trained public employees to the public, and encourage City employees in all classifications to pursue academic degrees and advanced training.
B. All financial changes outlined in this article shall become effective within the first pay period beginning after the effective date of this Agreement.
C. Effective July 2018 all members of the bargaining unit will receive $50.00 a month for an associate's degree, $100.00 a month for a bachelor's degree and $150.00 a month for a masters degree. This degree will be validated through the Human Resource Department of the City of Las Vegas, which will be provided to them and must be from an accredited college or university.

ARTICLE ~~34~~ 33 CALL-BACK COMPENSATION

Bargaining unit employees in an off duty status will receive a minimum of two (2) hours of alarm calls. Bargaining unit employees will be compensated for all hours actually worked and such time will be considered time worked for the purposes of computing FLSA overtime.

ARTICLE ~~35~~ 34 SICK LEAVE INCENTIVE

A. Full-time employees **on shift work schedules** who use ~~four (4) hours~~ **twelve (12) hours** of sick leave or less from January 1st through June 30th will receive ~~eight (8) hours~~ **twenty-four (24) hours** of administrative leave to be used within sixty (60) days. Full-time employees **on shift work schedules** who use ~~four (4) hours~~ **twelve (12) hours** of sick leave or less for the period of July 1st through December 31st will receive ~~eight (8) hours~~ **twenty four (24) hours** of administrative leave to be used within sixty (60) days.

ARTICLE ~~36~~ 35 HOLIDAY PAY

Bargaining unit employees assigned to work on City approved Holidays will be compensated in accordance with the City of Las Vegas Code Book Chapter 66:Personnel Rules §66-51 Holiday Leave.

ARTICLE ~~37~~ 36 LIABILITY COVERAGE

Should a member of the bargaining unit be sued in a civil action for any allegations arising out of the course and scope of their employment, the Employer will defend and indemnify that employee pursuant to the requirements of the New Mexico Tort Claims Act, Section 41-4-1, and et. Seq., NMSA 1978, (as amended).

ARTICLE ~~38~~ 37 SAVINGS CLAUSE

Should any part of this Agreement or any provision contained herein be declared invalid by the City of Las Vegas Labor Management Relations Board or any court of competent jurisdiction, the validity of the remaining portions shall not be affected.

ARTICLE ~~39~~ 38 TERMS OF AGREEMENT

This Agreement shall become effective upon ratification and signature of this agreement~~, July 1, 2016,~~ or upon resolution of impasse, whichever ~~occurs~~ **is** later, **and shall** ~~This Agreement will~~ remain in full force and effect through June 30, ~~2018~~ **2020**. ~~Either party may request the reopening of negotiations. Reopening of negotiations will include one (1) economic and one (1) non-economic article identified by each party by submitting written notice to the other party no later than March 15, 2017. Either party may request to negotiate a successor collective bargaining agreement by submitting a written notice to the other party no later than March 15, 2018.~~ **The parties may reopen negotiations on Article 32. Compensation, and two (2) other articles identified by each party filing written request to open negotiations no later than February 15, 2019. Negotiations for a successor full collective bargaining agreement will occur upon written request by a party filed no later than January 15, 2020.**

ARTICLE ~~40~~ 39 AUTHORIZED SIGNATURES AND ATTEST

IN WITNESS WHEREOF, the parties have executed the amendments to this Agreement on this

____ day of _____ November, ~~2016~~ **2018**.

Tonita Gurulé-Girón, Mayor	Date
Ann Marie Gallegos, Interim City Manager	Date
Joseph Garafalo, President IAFF Local 4625	Date

ATTEST:

Casandra Fresquez, City Clerk	Date

Approved as to legal sufficiency only:

Esther Garduno-Montoya, City Attorney	Date

IAFF

International Association of Fire Fighters

THE LAS VEGAS, NEW MEXICO PROFESSIONAL

FIRE FIGHTERS ASSOCIATION

IAFF Local 4625

and

The City of Las Vegas

_____ through June 30, 2020

PREAMBLE

This Agreement is entered into by and between the City of Las Vegas, New Mexico, hereinafter referred to as the "Employer", and the Las Vegas New Mexico Firefighters Association, Local #4625, International Association of Fire Fighters, hereinafter referred to as the "Union". For the purposes of this Agreement, "employee" shall mean any City Fire Department employee covered by this Agreement pursuant to Article 1, herein.

The purpose of this agreement is to maintain harmonious relations between the Employer and the Union, to provide terms and conditions of employment for employees covered hereunder, and to provide a means of amicable and equitable resolution of any and all differences or grievances which may arise under the provisions of this Agreement, all of which the parties hereto believe and affirm will assure the welfare and benefit of the people of the City of Las Vegas.

ARTICLE 1 RECOGNITION

The employer recognizes the Union as the sole and exclusive representative in all matters concerning wages, hours and other terms and conditions of employment for all employees in the bargaining unit in the positions of Firefighter and Engineer.

The bargaining unit is established per the City of Las Vegas Labor Management Relations Board in accordance with the Public Employee Bargaining Act NMSA Chapter 10 Article 7E.

ARTICLE 2 DISCRIMINATION

The parties to this Agreement agree not to discriminate against any employee because of race, color, religion, sex, national origin, marital status, membership or non-membership in the union, age, sexual orientations, disability, veteran status, or any other group protected by local, state or federal law. There shall be no discrimination, interference, restraint, or coercion by the Employer against any employee for lawful activity on behalf of, or membership in the Union on non-work time and unpaid status.

ARTICLE 3 COMMUNICATION

A. In the interest of creating and maintaining positive, productive, open and honest, communication between labor and management, the parties agree to establish a process for the exchange of information.

B. Should the Employer determine that it is necessary to change, modify or replace existing departmental rules, regulations, policies or procedures affecting bargaining unit members, the Chief or their designee shall advise the Union President and provide them with a copy of the proposed changes. Within ten (10) business days, the Union President will advise the Fire Chief if the Union wishes to meet and discuss the proposed changes.

C. Formulation of a new Fire Chief's Directives, Department SOPs/SOGs, Job Specifications or other department rules and regulations shall be a mandatory topic of discussion of the City Safety Committee.

D. The Employer will provide each member of the bargaining unit a copy of the current Las Vegas Fire Department Handbook. Management will provide any changes or updates of material contained in the Fire Department Handbook to each employee. It is the responsibility of each employee to keep his or her own handbook up to date when provided with changes or updates. Changes shall be made no later than June 1st for the upcoming fiscal year. No other changes will be allowed after that date.

ARTICLE 4 PAYROLL DUES DEDUCTIONS

Union Dues in the amount certified by the Union Treasurer will be deducted by the employer from the bargaining unit member's paycheck and deposited in to the bank account specified by the Union in writing. Initial payroll deductions will be stipulated in writing by each individual member. Any changes in dues deductions will be certified in writing by the Union Treasurer. A copy of the Union's By-Laws and signature cards from the members will be made available upon request. Changes shall be made once each fiscal year by written notification to the City's Human Resource office no later than June 1st for the upcoming fiscal year. No other changes will be allowed after that date.

ARTICLE 5 BULLETIN BOARDS

The Employer shall provide bulletin board space at each fire station where bargaining unit members are staffed for the exclusive use of the Union. The bargaining unit members will provide the board and agree to post only appropriate professional material on the bulletin board. Any posting of inappropriate material or nature will result in loss of the privilege to post on the board.

ARTICLE 6 MANAGEMENT RIGHTS

The Employer's rights shall include, but are not limited to the following:

A. To direct and supervise all operations, functions and the work of employees;

B. To determine the details of accomplishing shift staffing requirements, to create, abolish or eliminate or reorganize work units;

C. To determine the need for, and the qualifications of, new employees, and to determine the qualifications for employees considered for transfer and promotions;

D. To determine the nature and content of personnel examinations;

E. To hire, promote, assign, transfer, discipline, demote, suspend, discharge or terminate employees;

F. To take actions as may be necessary to carry out the mission of the employer in emergencies; and

G. The Employer retains the rights and responsibilities not specifically limited by this agreement or the Public Employees Bargaining Act.

ARTICLE 7 UNION RIGHTS

A. The Union has the right to elect and/or to appoint its own executive officers, stewards, and trustees. Union President must provide a list of appointees by July 1st of each year and within five (5) days of any changes along with their contact information and scope of authority and that only the people on the list will be recognized as union officers, stewards and trustees.

B. Employees may be granted vacation leave or leave-without-pay for Union business, with five (5) days notice.

C. The Employer shall allow the Union President, other Union Officers, or union members designated by the President to attend, on paid status, meetings in which the Employer requests the assistance of the Union President.

D. The Fire Department training/meeting rooms will be made available with proper notice for Union monthly membership meetings, Executive Board meetings, and special meetings. Employees who are on-shift will be permitted to attend such meetings provided that departmental operations are not impacted. Such meetings will be scheduled at times that will not hinder normal operations. The person or persons on duty during such meetings will respond to all emergency calls immediately upon dispatch.

ARTICLE 8 JURY DUTY

The City's current policy on Jury Leave shall apply to all bargaining unit members

ARTICLE 9 VACATION LEAVE

Bargaining Unit employees will accrue vacation leave in accordance with City Policy.

ARTICLE 10 FAMILY AND MEDICAL LEAVE

The City's policy regarding Family and Medical Leave Act in accordance with Federal Law shall apply to bargaining unit members.

ARTICLE 11 LEAVE TO VOTE

A. Bargaining Unit employees will be granted leave to vote in accordance with State and Federal Law.

B. The Fire Chief shall schedule leave to vote and may require bargaining unit members to show proof of voter registration.

C. Employees released from work to vote shall proceed directly to their precinct polling station to vote, and shall return to their duty station immediately after casting the ballot.

ARTICLE 12 SENIORITY

A. Seniority for the purpose of this contract shall be defined as length of continuous unbroken service within the fire department commencing upon the employee's date of hire. Continuous unbroken service shall not be considered to have been interrupted by periods of approved leave-without-pay or an approved temporary leave of absence.

B. Time-in-position seniority is defined as the length of continuous service an employee has in their current classification/job position. The employee's date of promotion begins as the date of employment in the current classification/job position. Voluntary reassignment, voluntary transfer, voluntary promotion or termination breaks time-in-position seniority.

C. Whenever two people have the same date of hire, then the tie will be broken by the use of lottery numbers, the lowest number becoming the most senior employee.

ARTICLE 13 INSURANCES

Bargaining unit employees will be eligible for the same insurance benefits as offered to other City employees at the current percentages applicable to premium payments. Those premiums currently are:

Health Insurance:	Employer pays 75% Employee pays 25%
Dental Insurance:	Employer pays 50% Employee pays 50%
Life Insurance:	Employer pays 100%
Disability Insurance:	Employee pays 100%
Vision Insurance:	Employer pays 50% Employee pays 50%

ARTICLE 14 LICENSURE

The City of Las Vegas will continue to offer refresher training, however, it shall remain the responsibility of bargaining unit employees to maintain EMT licensure in accordance with the position requirements and law at a level of EMT-B or higher. The City of Las Vegas shall pay for all assigned refreshers (one (1) per year) and may make available additional continuing education hours for re-licensure.

ARTICLE 15 UNIFORMS

A. Uniforms will be replaced as determined by the Fire Chief.

B. Bargaining unit employees shall be responsible for maintenance, upkeep, and appearance of their uniforms. Uniforms are subject to inspection by the Fire Chief.

ARTICLE 16 UNIFORM ALLOWANCE

Uniform allowance of $400.00 annually, paid in two installments of $200.00. Bargaining Unit employees will receive one payment of $200.00 in July and one payment of $200.00 in January of each fiscal year. Employees shall net $200.00 per payment. Uniform Allowance payments will be itemized on employees' pay checks.

ARTICLE 17 PHYSICAL FITNESS

A. The firefighting profession requires each member to maintain a high degree of physical fitness for the safety of the individual and the citizens they serve. It is agreed that all personnel will participate in the wellness program in order to improve on personal fitness and maintain efficient job performance.
B. Firefighters shall be allowed up to two (2) hours daily to maintain physical conditioning at the Abe Montoya Recreation Center or Station Two (2) fitness area. These two hours shall include the changing of uniforms and personal hygiene/grooming. Firefighters shall also be permitted to utilize the Recreation Center on non-duty days at no cost to the employee. All equipment related to physical fitness at the Recreation Center and Station Two (2) fitness area may be utilized; with the understanding that any and all safety features of each machine must be in place and functioning. When free weights are utilized on-duty, a spotter must be in place and weight shall not exceed 225 pounds. Upon receiving any emergency call, firefighters shall respond from either location in appropriate attire and PPE.
C. The City will commit to creating a Physical Fitness Policy ran by the appointed Wellness Coordinator within the Fire Department. The Union will also work in good faith with the Wellness Coordinator to follow the guidelines set forth in the aforementioned Physical Fitness Policy.
D. All personnel must wear a presentable LVFD t-shirt while working out on duty. This will ensure professional representation of the department and also identify each firefighter on duty.

ARTICLE 18 LABOR MANAGEMENT COMMITTEE

A. If during the term of this agreement the parties agree there is a need for a Labor Management Committee such a committee shall be formed as follows:

1. The committee shall meet at least once per quarter at mutually agreed upon times and places.
2. The Association and the Employer shall each appoint two members unless otherwise agreed.
3. The Committee shall be free to address any topic of mutual concerns to the parties.

4. It is understood and agreed that the outcome of the meetings shall not be considered as constituting a binding agreement of the parties unless specifically so stated in writing.
5. This committee is not empowered to negotiate or change the collective bargaining agreement.

B. The Fire Chief or his designee, and a President of the Association may meet as needed at mutually agreed upon times and places to discuss possible conflicts or problems that may arise and try to resolve them at the lowest possible level. By mutual agreement items may be referred to the Labor Management Relations Committee should such a committee be formed.

ARTICLE 19 CITY SAFETY COMMITTEE

A. The purpose of the Safety Committee is to review policies and recommend modifications as necessary to the City Manager. The committee shall meet bi-annually or as required by management.

B. In accordance with the City's Safety and Health Policy, the Safety Committee shall include two bargaining union members.

C. The IAFF President shall make his/her appointments of the two bargaining members for the Safety Committee.

D. Union members may attend safety meetings on paid status.

ARTICLE 20 DISCIPLINARY ACTION

A. Employees may be disciplined for just cause. A progressive discipline process shall be utilized, if appropriate. The level of discipline shall depend on the seriousness of the infraction, and the employee's previous work/discipline record. Based on the severity of the action, an employee may be subject to discipline up to and including termination.

B. Types of discipline
   a. Letter of Reprimand
   b. Suspension from work without pay
   c. Demotions
   d. Dismissal/Discharge for cause

C. An employee against whom disciplinary action is contemplated will be provided with written charges and afforded the opportunity to respond to the charges in writing within three (3) days of receipt of such notice. An employee may also request a pre-disciplinary meeting with the Chief or designee, within the three (3) day period, for any disciplinary action involving suspension, demotion, or termination. The pre-disciplinary meeting will provide the employee an opportunity to present information regarding the situation which gave rise to the contemplated disciplinary action. Following the pre-disciplinary

meeting, the Chief or designee will inform the employee whether he will forward a recommendation of suspension, demotion, or termination to the City Manager. Written charges will be presented to the employee once management believes it has sufficient information to proceed with charges against the employee.

D. Should the Chief forward a recommendation for suspension, demotion, or termination to the City Manager, an employee shall have the right to a pre-disciplinary meeting with the City Manager. The meeting will afford the parties an opportunity to discuss the contemplated disciplinary action and provide the employee an opportunity to provide information regarding the situation which gave rise to the contemplated action. The City Manager shall provide the employee with a written decision within fourteen (14) calendar days following the pre-disciplinary meeting.

E. No pre-disciplinary meetings shall be required prior to the issuance of a written reprimand.

F. Disciplinary action as defined in B. above may be appealed by the affected employee through the grievance and appeal process as provided in the Agreement under Article 21.

G. If the appeal of the disciplinary action is not satisfactorily resolved at the City Manager level, it may be submitted to final and binding arbitration as per Article 21 of this agreement.

H. If no appeal is requested, the disciplinary action shall be final subject to review by the Human Resource Director/Officer and is subject to the approval and signature of the City Manager.

ARTICLE 21 DISCIPLINARY APPEAL, GRIEVANCE AND ARBITRATION PROCEDURES

A. A Grievance is defined as a written formal complaint alleging a violation, misapplication, or misinterpretation of any of the provisions of this Agreement or City Personnel Rules and Regulations. Appeal of disciplinary actions as defined in Article 20 shall also be accomplished through this process. Employees are obligated to attempt to resolve a grievance at the lowest level possible prior to filing a written grievance at Step 1 of this process.

B. Grievances/appeals shall be filed by the individual employees or by the exclusive representative on behalf of an individual employee or a group of employees. The grievance/appeal shall be signed by the aggrieved employee or employees and/or the Union representative.

C. An individual employee may present a grievance/appeal under the provisions of this Article without the intervention of the Union and have the grievance/appeal adjusted as long as (1) the adjustment is consistent with the terms of this Agreement, and (2) the employee is responsible for all expenses incurred at any hearing or meeting on a

grievance/appeal brought by the individual employee. The Union shall be afforded the opportunity to be present and make its views known. In a situation where the employee has elected not to use the Union's services, and is requesting arbitration the employer and the employee shall deposit $3000.00 each in an escrow account for the payment of arbitration.

D. The written grievance/appeal shall include:

   a. The employee/grievant's name, job, title, department;
   b. The Union representative/steward's name, address and telephone number; if applicable.
   c. The Article(s) of this Agreement or section of the Personnel Rules and Regulations alleged to have been violated;
   d. The date the incident or violation occurred;
   e. The Management employee, if any, against whom the action is filed;
   f. A description of the alleged violation providing more than just the Article or Section identification.
   g. If the phrase "to be made whole" is used in the relief requested, the grievant shall specify what specific relief is desired. The relief requested shall include a specific statement describing the grievant's settlement request; and
   h. The signature and date of the grievant and the Union representative.

E. A written grievance/appeal shall be presented to the employee's Immediate Supervisor within ten (10) working days of the action that gave rise to the grievance or appeal, or of the date the employee became aware of the action. If the grievance/appeal is not resolved within ten (10) working days of the date of the grievance/appeal was filed with the immediate supervisor, the grievance/appeal may be advanced to the Fire Chief or designee.

F. If the grievance/appeal is not resolved within ten (10) working days of the date of the grievance/appeal was filed with the Fire Chief or designee, the grievance/appeal may be advanced to the City Manager.

G. If the issue is not resolved at the Fire Chief or designee level, the grievance/appeal may be advanced to the City Manager by presenting the written grievance/appeal to the City Manager within ten (10) working days of the filing with the Department Head. This means within ten (10) working days of the initial filing of the grievance/appeal with the Department Head. The parties will mutually agree on a date, time, and place to meet and attempt to resolve the grievance/appeal. If the issue is not resolved within ten (10) working days of the filing with the City Manager, the grievance/appeal may be advanced to arbitration.

H. The grievance/appeal is advanced to arbitration by presenting such written notice to the City Manager within fifteen (15) working days of the initial filing at the City Manager level.

I. Within ten (10) working days of the filing of the written notice of advancement to arbitration, a request for an unrestricted list of arbitrators from the Federal Mediation and Conciliation Service (FMCS) shall be submitted by the parties. The request for this list of arbitrators shall be signed by both parties.

J. Within ten (10) working days of receipt of the arbitrator list, the parties shall meet to select an arbitrator.

K. The selection of the arbitrator shall be accomplished by the parties alternating striking of names until only one name remains. The remaining name shall be the arbitrator. Who strikes the first name is determined by the flip of a coin.

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required by law. The Employer, through the Safety Office, will provide safety training on an as needed basis.

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C. All respiratory protection equipment shall meet and be maintained in a manner consistent will all applicable NFPA and New Mexico State OSHA standards.

ARTICLE 24 HOURS OF WORK

Assigned shifts for bargaining unit employees will be forty-eight (48) hours on and ninety-six (96) off. Overtime will be paid in accordance with FLSA on a 14-day pay cycle, the overtime threshold for this work period will be 106 hours.

Employees covered by this agreement shall work a 48 hour on duty and 96 hour off duty shift in accordance with the following rotating schedule below.

Days of Cycle:
Shift:

1	2	3	4	5	6	7	8	9	10	11	12	13	14
*A	*B	B	*C	C	A	A	B	B	C	C	A	A	B
1	2	3	4	5	6	7	8	9	10	11	12	13	14
B	C	C	A	A	B	B	C	C	A	A	B	B	C
1	2	3	4	5	6	7	8	9	10	11	12	13	14
C	A	A	B	B	C	C	A	A	B	B	C	C	A
1	2	3	4	5	6	7	8	9	10	11	12	13	14
A	B	B	C	C	A	A	B	B	C	C	A	A	B
1	2	3	4	5	6	7	8	9	10	11	12	13	14
B	C	C	A	A	B	B	C	C	A	A	B	B	C
1	2	3	4	5	6	7	8	9	10	11	12	13	14
C	A	A	B	B	C	C	A	A	B	B	C	C	A

Shifts shall commence at 0900 and continue through to 0900, consisting of forty-eight (48) hours on duty.

*The team beginning their 2nd day of a 48hr shift on the 1st day of a 14-day pay cycle will be scheduled for 120 hours of work. (i.e. A shift on 2nd row, 1st column)

*The team beginning their 48hr shift on the 2nd day of the 14-day pay cycle will be scheduled for 120 hours of work. (i.e. B shift on 2nd row, 2nd column)
*The team beginning their 48hr shift on the 4th day of a 14-day pay cycle will be scheduled for 96 hours of work. (i.e. C shift on 2nd row, 4th column)

ARTICLE 25 SHIFT EXCHANGE

For the period of this Agreement the parties shall recognize the City of Las Vegas Fire Department Shift Exchange Policy dated 2/13/2009.

ARTICLE 26 DRUG AND ALCOHOL TESTING

The parties agree that substance abuse will not be tolerated in the Fire Department. In recognition of the need to maintain a drug and alcohol free workplace the employer has adopted a drug and alcohol policy (Resolution 04-03). Management may at any time amend this policy; however, the employer agrees to submit to the Safety Committee any proposed amendments to the policy. Management may consider any recommendations from the Safety Committee.

ARTICLE 27 VACANCIES

Vacancies will be announced as per the City of Las Vegas Code Book Chapter 66. Personnel Rules and revisions thereof.

ARTICLE 28 PRIVATIZATION AND CONTRACTING OUT

A. The Employer agrees that prior to privatizing or contracting out bargaining unit positions, the Union will be allowed to submit input in writing no later than ten (10) working days, to the office of the City Manager, with a copy delivered to the Human Resources Department. A written response shall be given to the Union no later than ten (10) business days.

B. The Employer agrees that it will formally inform the Union of any and all pending changes which will result in the loss of full time equivalents or bargaining unit positions upon receiving information of such pending changes.

ARTICLE 29 PERSONNEL RECORDS

A. The employees' Official Personnel files will be maintained in the Human Resources Office. Employees, or their designee, by written authorization, may review the employees' files by appointment during the regular business hours of the Human Resources Office. Such review shall not interfere with the employees' work time.

B. Employees may obtain copies of material in their personnel file. A fee of $1.00 per copy up to ten (10) pages will be charged. Copies beyond ten (10) pages will be provided at $0.50 per page.

C. Employees may submit a rebuttal to any material that is placed in the employees' personnel file. Such rebuttal must be submitted within thirty (30) calendar days of the effective date of the material in question.

D. Employees may request in writing that letters of commendation or certificates of completion of training be placed in their file. A Human Resources Officer shall determine if such material appropriate for placement in the employee's file.

E. The Human Resources Personnel File is the official employment history of the employee and shall not be purged except by order of an arbitrator or judge of competent jurisdiction.

ARTICLE 30 PERA

City and Employee contribution rates for PERA shall remain in effect for the duration of this agreement.

ARTICLE 31 COMPENSATION

A. Effective the first full pay period after July 1, 2018, or following ratification and signature of the Agreement, or resolution of impasse, whichever is later, all bargaining unit employees will receive a seventy-five cent ($0.75) increase to the employee's regular hourly rate of pay and a 1.5% annual increase thereafter subject to negotiations.

ARTICLE 32 EDUCATIONAL PAY

A. The Union and the City recognize the value of higher education and trained public employees to the public, and encourage City employees in all classifications to pursue academic degrees and advanced training.
B. All financial changes outlined in this article shall become effective within the first pay period beginning after the effective date of this Agreement.
C. Effective July 2018 all members of the bargaining unit will receive $50.00 a month for an associate's degree, $100.00 a month for a bachelor's degree and $150.00 a month for a masters degree. This degree will be validated through the Human Resource Department of the City of Las Vegas, which will be provided to them and must be from an accredited college or university.

ARTICLE 33 CALL-BACK COMPENSATION

Bargaining unit employees in an off duty status will receive a minimum of two (2) hours of alarm calls. Bargaining unit employees will be compensated for all hours actually worked and such time will be considered time worked for the purposes of computing FLSA overtime.

ARTICLE 34 SICK LEAVE INCENTIVE

A. Full-time employees on shift work schedules who use twelve (12) hours of sick leave or less from January 1st through June 30th will receive twenty-four (24) hours of administrative leave to be used within sixty (60) days. Full-time employees on shift work schedules who use twelve (12) hours of sick leave or less for the period of July 1st through December 31st will receive twenty four (24) hours of administrative leave to be used within sixty (60) days.

ARTICLE 35 HOLIDAY PAY

Bargaining unit employees assigned to work on City approved Holidays will be compensated in accordance with the City of Las Vegas Code Book Chapter 66:Personnel Rules §66-51 Holiday Leave.

ARTICLE 36 LIABILITY COVERAGE

Should a member of the bargaining unit be sued in a civil action for any allegations arising out of the course and scope of their employment, the Employer will defend and indemnify that employee pursuant to the requirements of the New Mexico Tort Claims Act, Section 41-4-1, and et. Seq., NMSA 1978, (as amended).

ARTICLE 37 SAVINGS CLAUSE

Should any part of this Agreement or any provision contained herein be declared invalid by the City of Las Vegas Labor Management Relations Board or any court of competent jurisdiction, the validity of the remaining portions shall not be affected.

ARTICLE 38 TERMS OF AGREEMENT

This Agreement shall become effective upon ratification and signature of this agreement, or upon resolution of impasse, whichever is later, and shall remain in full force and effect through June 30, 2020. The parties may reopen negotiations on Article 31. Compensation, and two (2) other articles identified by each party filing written request to open negotiations no later than February 15, 2019. Negotiations for a successor full collective bargaining agreement will occur upon written request by a party filed no later than January 15, 2020.

ARTICLE 39 AUTHORIZED SIGNATURES AND ATTEST

IN WITNESS WHEREOF, the parties have executed the amendments to this Agreement on this

____ day of _____ November, 2018.

Tonita Gurulé-Girón, Mayor	Date
Ann Marie Gallegos, Interim City Manager	Date
Joseph Garafalo, President IAFF Local 4625	Date

ATTEST:

Casandra Fresquez, City Clerk	Date

Approved as to legal sufficiency only:

Esther Garduno-Montoya, City Attorney	Date

Regular or Special
CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/7/18 **DEPT: Human Resource** **MEETING DATE**: 11/20/18

ITEM/TOPIC: AFSCME Local 2851 Agreement

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of The American Federation of State, County and Municipal Employees (AFSCME) Local 2851 Agreement.

BACKGROUND/RATIONALE: The City entered into contract negotiations with AFSCME for purposes of negotiating a new contract. The American Federation of State, County and Municipal Employees Local 2851 has ratified and approved collective bargaining agreement.

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION: *Management Team recommends approval of contract.*

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR (PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

ESTHER GARDUNO MONTOYA, CITY ATTORNEY (ALL CONTRACTS, ORDINANCES AND RESOLUTIONS MUST BE REVIEWED)

Revised 9/18

COUNCIL 18
AFSCME
WE MAKE NEW MEXICO HAPPEN
www.afscme18.org

Date: November 7, 2018

To: Casandra Fresquez, CMC
City Clerk/HR Director

Darlene Arguello
Human Resource Department

From: Sam Chavez,
AFSCME Council 18, Union Representative

Re: Contract Ratification

As per the agreement between City of Las Vegas and AFSCME Local 2851, Article 41.Term of the agreement, a ratification was conducted and voted pass by the members of Local 2851.
Thanks for all the work that the city's bargaining team did for the city of Las Vegas employees.

Respectfully,

Sam Chavez
AFSCME Council 18
Cell 604-6446

1202 Pennsylvania St. NE • Albuquerque , NM 87110
505.266.2505 Office • 505.266.2404 Fax • www.afscme18.org

AFSCME

American Federation of State, County and Municipal Employees

"Working together to make it better!"

AFSCME LOCAL 2851
and
The City of Las Vegas

~~September 9, 2015~~ November ___, 2018 through ~~June 30, 2017~~ June 30, 2021

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****Page Numbers are subject to change after Final Contract is complete****

ARTICLE 1. PREAMBLE

A. The general purpose of this agreement is to provide for orderly and constructive employee relations in the public interest, in the interest of all employees herein covered, and in the interest of the City; to maintain harmony, cooperation and understanding between the Employer and the employees in the Bargaining Unit; to afford protection of the rights and privileges of Bargaining Unit employees and the Employer; and to ensure the continued delivery of services to the citizens of Las Vegas.

B. The City, the Union, and its members agree that a sincere effort will be made to administer and abide by this agreement in accordance with the negotiated intent terms and provisions for the purpose of maintaining sound labor management relations and consistency with the union's status as exclusive bargaining representative of all employees in the bargaining unit.

ARTICLE 2. RECOGNITION

A. This Agreement (hereinafter referred to as the "Agreement") has been made and entered into by and between the City of Las Vegas, a municipal corporation (hereinafter referred to as the "Employer" or the "City") and Local 2851 of the American Federation of State, County and Municipal Employees, Council 18. AFL-CIO, representative of the City of Las Vegas' Blue and White Collar employees, (hereinafter referred to as the "Union").

B. Chapter 48. Labor Management Relation of the city of Las Vegas' Code was enacted "to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the rights of citizens to the orderly and uninterrupted delivery of services."

C. This Union is recognized as the exclusive representative ~~of~~ for all regular full time city employees regarding all matters pertaining to wages, hours, working conditions, and conditions of employment in the classifications identified in Appendix A and Appendix B of this Agreement.

D. The appropriate bargaining unit shall not include probationary, supervisory, managerial, or confidential employees.

ARTICLE 3. PRIVATIZATION AND CONTRACTING OUT

A. The City agrees that prior to privatizing or contracting out bargaining unit positions, the Union will be allowed to submit input in writing no later than ten (10) working days after the notice from the City. Such written notice shall be presented to the City Manager with a copy delivered to the Human Resources Department. A written response shall be given to the Union no later than ten (10) working days after the receipt.

~~B. The City agrees that it will formally inform the Union of any applications which will result in the loss of full time equivalents or bargaining unit positions upon receiving concrete information of such application(s).~~

The City agrees that it will notify the Union of any staffing changes that will result in the loss of full time equivalent bargaining unit positions prior to removing those positions from the table of organization.

ARTICLE 4. UNION DUES ~~AND FAIRSHARE~~ DEDUCTIONS

~~Section 1. Fair Share~~

~~A. While the parties acknowledge that it is the right of each bargaining unit employee to either participate and voluntarily pay membership dues to the exclusive representative or opt out of any and all Union activities, it is also acknowledged that any advance to a bargaining unit employee's wages, benefits and working conditions obtained through the negotiation of this contract has been obtained through the collective bargaining process permitted by law. It is also acknowledged that both parties expend their own funds to implement this collective bargaining process.~~

~~B. After this Agreement has been ratified by vote of the union members and the Governing Body, the employer agrees to deduct an amount equal to 75% of the membership dues rate, pursuant to Section 2, below, for a fair share payment from non-dues-paying bargaining unit employees.~~

Section ~~2.~~**1** Payroll Deduction

A. The Employer shall make employee payroll deductions each pay period for:

1. Union membership dues~~; and~~

~~2. Fair share payments~~

B. All money deducted from wages under this Article shall be remitted to the Union via the Secretary-Treasurer promptly after the pay day covering the pay period deduction.

C. Payroll deduction authorizations for Union membership dues in the possession of the Employer on the effective date of this Agreement will be honored. The Employer will honor individual payroll deduction authorization forms received after the effective date of the Agreement. ~~Fair share payments require no authorization forms, but rather notification by the Union to the non-dues paying bargaining unit employees of the amount and reason for such payment.~~ The Employer will begin the deduction promptly but in no event, later than one pay period after receipt of the payroll deduction authorization form from the employee or Union.

D. The duty of the Employer to honor payroll deduction authorizations shall continue until the expiration of this Agreement or until otherwise approved by the Union and notification in writing has been given to the employer by a duly authorized officer.

Section ~~3.~~**2** Dues Termination and Reimbursement

A. Dues deductions may be terminated at the written request of the employee to the Employer and the Union. The revocation form shall be submitted only between November 1, and November 30, of each year to the Personnel Department and the Union for processing.

B. The Employer shall immediately terminate dues deductions when an employee is transferred out of the bargaining unit or is separated from the City. In the event that dues/~~fair share~~ deductions are to be terminated the Employer shall notify the Union in writing the pay period the termination is effective. Notification shall include the names of the employees whose deductions are being terminated, whether they are dues members ~~or fair share~~ and the reason for termination.

C. If in the event a reimbursement is owed to an employee due to a transfer out of the bargaining unit, the employee shall inform the Secretary-Treasurer, in writing, no later than thirty (30) calendar days after the effective date of the transfer, and provide support documentation indicating the pay periods, amount, and reason for the reimbursement.

Section ~~4.~~3 Dues/~~Fair Share~~ Amounts

A. In accordance with the AFSCME Constitution, per capita tax payments increase every year; therefore dues and fair share deductions are increased accordingly. Beginning the last pay period in December of each calendar year for the duration of this Agreement, the dues/fair share deductions shall increase by an amount to be set forth in writing by the Union to the Employer from a duly authorized officer.

B. The increase(s) shall take effect the last pay period in December for the following year.

C. If an employee has insufficient earnings for the pay period, no payroll deductions will be made for that employee for that pay period.

D. The Union shall indemnify and hold the Employer harmless for any employee claims involving deductions under this article.

~~E. Should the City request a copy of the audit in order to meet its obligation in affirming that the fair share deduction is appropriate, the Union, if required by law, shall provide a copy of the audit to the City Manager.~~

ARTICLE 5. UNION RIGHTS

A. The Union has the right to elect and/or appoint its Union staff, officials, and stewards.

1. **The Union President must provide the City Management Team a list by July 1st of each year and within five (5) days of any changes along with their contact information and scope of authority and only the people on the list will be recognized as union officers, stewards and trustees.**

B. The Union officials and stewards may engage in activities and conduct business regarding the negotiations and administration of this Agreement. Such activities will not interfere with the employee's work and shall not be performed during employee's work time except in such circumstances to permit the employee to

contact a Union steward or official, time not to exceed five (5) minutes. Union officers/stewards shall be allowed reasonable access and time at the worksites to update bargaining unit employees on Union issues.

C. The employer will provide the space, and the Union will provide the bulletin board to be used for Union official business and notices. The bulletin board shall not be used to criticize the Union, its officers, members, elected city officials, management, or other city employees.

D. City facilities commonly used by other civic organizations will also be available for Union activities subject to the same conditions as the civic organizations.

E. City bargaining unit employees may be granted vacation or leave without pay for union business, with five (5) days prior notice, subject to staffing requirements.

F. The City Manager shall budget ~~120~~ **90** hours of Labor Management Relation Administrative Leave and the employer shall allow the Union President or Vice President and the Chief steward who are employees (hereinafter referred to as "Employee Officials") to attend meetings on paid status. Meetings agreed to by both parties.

G. The Union President or the Vice President may request approval for the use of Labor-Management Relations Administrative Leave to attempt to resolve a labor management relations issue (potential grievance) that is of mutual concern to the Union and the City Manager. This leave shall be made on the City's regular leave form and is subject to the approval of the City Manager.

ARTICLE 6. MANAGEMENT RIGHTS

The Employer's rights shall include, but are not limited to the following:

A. To direct and supervise all operations, functions, and the work of the employees;

B. To hire, layoff, promote, demote, assign, reassign, transfer, discipline, and discharge employees;

C. To determine what, by whom, and when services will be rendered to the citizens;

D. To determine staffing requirements, to create or abolish positions, or to eliminate or reorganize work units;

E. To determine the need for the qualifications of new employees, to determine the qualifications for positions, and to determine qualifications of employees to be considered for transfer or promotion;

F. To take action as necessary to carry out the mission of the Employer in emergencies; and

G. The employer retains all rights not specifically limited by this Collective Bargaining Agreement.

ARTICLE 7. NON-DISCRIMINATION AND SEXUAL HARASSMENT

The parties agree that they will not practice nor tolerate discrimination because of race, color, religion, sex, ancestry, national origin, age, disability, marital status, union or non-union ~~affiliation~~ **membership**, union activity, or political affiliation. Sexual harassment will also not be tolerated by the parties.

ARTICLE 8. SENIORITY

~~A.~~ City Seniority
City Seniority for the purpose of this agreement is defined as length of continuous service from the last date of hire with the City of Las Vegas. Continuous service shall not be considered to have been interrupted by periods of approved leave without pay or an approved leave of absence.

~~B.~~ Department Seniority
Department Seniority is the length of continuous service an employee has in their current department. Department Seniority is broken by voluntary assignment to another department.

~~C.~~ Classification Seniority
Classification Seniority is defined as the length of continuous service employees have in their current classification. Classification Seniority begins as of the date of employment in the current classification. Voluntary reassignment, voluntary transfer, voluntary promotion, resignation or termination breaks Classification Seniority.

~~D.~~ It is recognized by the parties that seniority will be applied, as required by law, for returning from military leave.

ARTICLE 9. DISCIPLINARY ACTION

A. Counseling sessions conducted by supervisors are primarily for the purpose of correcting performance or behavior that is below acceptable standards. Counseling discussions are not part of the disciplinary process as defined in C. below and such counseling will not be documented in the employee's official Human Resources file unless it becomes part of an official disciplinary action taken by management. The supervisor ~~may~~ **shall** retain a dated record of such meeting ~~outlining a summary~~ **in a working file and provide HR a copy to keep in a separate file.**

B. Disciplinary action will be based on just cause. The degree of discipline will be based on the frequency and severity of the infraction, with the exception of any safety related incidents that may cause serious injury/death to self or others.

C. Employer may impose any disciplinary action or issue a notice of contemplated action no later than forty-five (45) days after it acquires knowledge of the employee's misconduct for which the disciplinary action is imposed, unless facts and circumstances exist which require a longer period of time. **In such cases, the employee will be notified.**

D. Types of discipline:

a. Written Warning~~, Removal from the personnel file One (1) year after an employee has received the Written Warning.~~
b. Letter of Reprimand
c. Suspension from work without pay
d. Demotions

e. Dismissal/Discharge for cause

f. Progressive Discipline may be used when management believes such method is appropriate. **Written Warning will not be used for progressive discipline after one (1) year. Letter of Reprimand will not be used for progressive discipline after two (2) years.** This shall in no way prevent the employer from taking severe disciplinary action including dismissal/discharge on the first offense.

g. An employee against whom disciplinary action is contemplated (under Section ~~C~~ **D** subsections ~~b-d~~ **c-e** as stated above) will be provided with written charges and afforded the opportunity to respond to the charges prior to the implementation of any disciplinary action by management. Written charges will be presented to the employee once management believes it has sufficient information to proceed with charges against the employee.

h. Disciplinary action as defined in ~~C~~.**D** subsections c-e above may be appealed by the affected employee through the grievance and appeal process as provided in the Agreement under Article 10.

i. If the appeal of the disciplinary action is not satisfactorily resolved at the City Manager level, it may be submitted to final and binding arbitration as per Article 10 of this agreement.

j. If no appeal is requested, the disciplinary action shall be final subject to review by the Human Resource Director/Officer and is subject to the approval and signature of the City Manager.

ARTICLE 9-I. COMPLIANCE WITH LAWS

Written personnel policies and procedures shall be ~~fairly and equitable~~ **reasonably** applied to all employees. Accommodations made to persons determined by the Employer to be qualified individuals with a disability shall not serve as precedent for other employees. With the exception of personnel policies and procedures dealing with compliance with the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Age Discrimination and Employment Act (ADEA), the Family and Medical Leave At (FMLA), the Equal Pay Act (EPA), and all other applicable federal and state equal employment opportunity laws and regulations, alleged violations of this article may be grieved in accordance with the Grievance Procedure.

ARTICLE 10. GRIEVANCE, APPEAL, AND ARBITRATION PROCEDURE

A. Grievance is defined as a written formal complaint alleging a violation, misapplication, or misinterpretation of any of the provisions of this Agreement or City Personnel Rules and Regulations. Appeal of ~~disciplinary actions as defined in Article 9.B.~~ **suspension, demotion or discharge only** shall also be accomplished through this process.

B. Grievances/appeals shall be filed by the individual employees or by the exclusive representative on behalf of an individual employee or a group of employees. The grievance/appeal shall be signed by the aggrieved employee or employees.

C. An individual employee may present a grievance/appeal under the provisions of this Article without the intervention of the Union and have the grievance/appeal adjusted as long as (1) the adjustment is consistent with the terms of this Agreement, and (2) the employee is responsible for all expenses incurred at any hearing or meeting on a grievance/appeal brought by the individual employee. **If the employee elects to bring a representative other than the Union to the grievance/appeal, then the City will require a written waiver of representation from the Union in the action.** The Union shall be afforded the opportunity to be present and make its views known. In a situation where the employee has elected not to use the Union's services, and is requesting arbitration the employer and the employee shall deposit ~~$3000.00~~ **$6000.00** each in an escrow account for the payment of arbitration.

D. The written grievance/appeal shall include:

a. The employee/grievant's name, job, title, department;

b. The representative/steward's name, address and telephone number;

c. The Article(s) of this Agreement or section of the Personnel Rules and Regulations alleged to have been violated;

d. The date the incident or violation occurred;

e. The Management employee, if any, against whom the action is filed;

f. A description of the alleged violation providing more than just the Article or Section identification.

g. If the phrase "to be made whole" is used in the relief requested, the grievant shall specify what specific relief is desired. The relief requested shall include a specific statement describing the grievant's settlement request; and

h. The signature and date of the grievant and the Union representative.

E. The original written grievance/appeal shall be presented to the employee's Department Head with a copy provided to Human Resources within ten (10) working days of the date the employee knew or reasonably should have known of the issue that generated the grievance/appeal. If the grievance/appeal is not resolved within ten (10) working days of the date ~~of~~ **the** grievance/appeal was filed with the department head, the grievance/appeal may be advanced to the City Manager.

F. If the issue is not resolved at the Department Head level, the grievance/appeal may be advanced to the City Manager by presenting the written grievance/appeal to the City Manager within fifteen (15) working days of the filing with the Department Head. This means within fifteen (15) working days of the initial filing of the grievance/appeal with the Department Head. The parties will mutually agree on a date, time, and place to meet and attempt to resolve the grievance/appeal. If the issue is not resolved within ten (10) working days of the filing with the City Manager, the grievance/appeal may be advanced to arbitration.

G. The grievance/appeal is advanced to arbitration by presenting such written notice to the City Manager within fifteen (15) working days of the initial filing at the City Manager level.

~~H.~~ Within ten (10) working days of the filing of the written notice of advancement to arbitration, a request for ~~an unrestricted~~ **a** list of arbitrators **for the NM region** from the Federal Mediation and Conciliation Service (FMCS) shall be submitted by the ~~parties~~ **Union**. ~~The request for this list of arbitrators shall be signed by both parties.~~

I. Within ten (10) working days of receipt of the arbitrator list, the parties shall meet to select an arbitrator.

J. The selection of the arbitrator shall be accomplished by the parties alternating striking of names until only one name remains. The remaining name shall be the arbitrator. Who strikes the first name is determined by the flip of a coin.

K. The Arbitrator shall render a final and binding decision **containing findings of fact and conclusions of law within 30 days of the close of the hearing**. This decision of the arbitrator is subject to judicial review in accordance with the New Mexico Uniform Arbitration Act. The parties shall share the cost of the arbitrator equally.

L. The Arbitrator's duties, responsibilities, and limitations are governed by the City's Labor Management Relations Ordinance.

M. This is the only internal grievance and appeal process available to bargaining unit employees.

N. Working day is defined as days that the administrative offices of the City are open for business. Any deadline that falls on a day that the administrative offices of the City are not open for regular business shall extend into the next day that the City Administrative Offices are open for business.

ARTICLE 11. CALL-IN COMPENSATION

When an employee is called in and required to work for an emergency prior to the beginning of the employee's normal work day, or is called back after the conclusion of the employee's normal work day, the employee will be guaranteed the greater of:

Two (2) hours straight time rate on scheduled work days, and three (3) hours straight time rate on non-scheduled work days

Or

Time and one-half (1 ½) for the actual time worked if such hours exceed forty (40) hours actually worked for the week.

Scheduled work day shall mean a day the employee is normally scheduled to work beginning at 12:01 AM through midnight.

Additional calls that occur during the minimum two (2) hours compensated time are included in the two (2) hours paid. ~~Reasonable~~ **A total of thirty (30) minutes** travel time to and from the employee's home shall be considered time worked. Time will begin when the employee receives the assignment and must leave for the assignment within fifteen (15) minutes of being called.

Management acknowledges that it is their responsibility to ensure that call-in compensation is not abused by the employee. Any abuse will be subject to disciplinary action up to and including termination.

ARTICLE 12. ON-CALL ASSIGNMENTS

Employees assigned to On-Call status for a period of seven (7) consecutive days will be paid six (6) hours at straight time for the on-call assignment. These hours will not be used for computing overtime compensation. Such employees must be ready and available to respond to deliver City services during the non-duty On-Call assignment. Failure to respond will result in loss of on-call pay **and disciplinary action**.

~~**The employee who is On-Call shall be dispatched by either emergency personnel or contact personnel.**~~

ARTICLE 13. REST PERIOD

A. ~~**AFSCME**~~ **Bargaining unit** employees shall not be required to work in excess of sixteen (16) consecutive hours.

B. If an employee is required to work sixteen (16) consecutive hours, he/she is guaranteed an eight (8) hour unpaid rest period **immediately following the sixteen (16) consecutive hours. Vacation leave may be substituted for the unpaid time.**

C. If the employee feels that he/she cannot report to work on a designated Emergency and safely perform his/her duties, they shall not be penalized.

~~**D. If the employee reports to work and the supervisor or manager deems them unfit to safely perform his/her duties at any time, then said supervisor or manager has the discretion to send them home**~~.

D. If an employee is called out to work a designated emergency after scheduled work hours or on holidays, work shall be paid at time and one half the normal rate of pay, even if the employee works less than forty (40) hours that week.

~~**E. Should the employee wish to forgo the eight (8) hour unpaid rest period, the employee may use his/hers vacation or sick leave.**~~

ARTICLE 14. LABOR MANAGEMENT MEETINGS

A. The parties will establish a labor management committee. The Committee will meet on an as needed basis, or at least once quarterly to discuss issues of mutual concern that relate to the administration of this agreement. The Union and the

Employer will each appoint two individuals to this committee. The individuals will be identified to the other party in writing for each meeting. The date, time and place of such meeting shall be by mutual agreement of the parties.

B. This committee has no authority to negotiate any changes to this Agreement.

ARTICLE 15. SAFETY

Safety is an integral part of the responsibilities of all employees. The employer will continue to provide healthful and safe working conditions. Employees shall comply with such rules, regulations, and practices as may be prescribed for the conduct of employees in order to provide a safe work environment, in acknowledgment with the City's Safety and Health Policy.* The employee shall notify his/her immediate supervisor **immediately** of any unsafe or hazardous working conditions **or workplace injury or accident**. The Employer will take appropriate action to correct unsafe or hazardous working conditions as required by law. The parties will meet to discuss health and safety issues of mutual concern. The time and place for the meetings will be set by mutual agreement of the parties. The Employer, through the Safety Office, will provide safety training on an as needed basis.

*Nothing in the City's Safety and Health Policy shall supersede any provisions and protections afforded to the membership of AFSCME Local 2851 in this agreement.

ARTICLE 16. SAFETY AIDS

The City shall provide Safety Aids needed by employees in the performance of ~~any and~~ all job related duties ~~that would occur on his tour of duty~~. This may include items such as: hard hats, gloves, earplugs, safety glasses, and safety vests.

Rain gear will be provided for employees whose duties are such that they will incur the outdoor elements. ~~Each department director~~ **Department Directors** will determine the type of rain gear needed for their individual department needs, which will be no less than a rain poncho.

A five (5) gallon water container with cold water will be provided to all crews working away from the City facilities.

ARTICLE 17. PERSONNEL RECORDS

A. The employees' Official Personnel files will be maintained in the Human Resources Office. Employees, or their designee by written authorization, may review the employees' files by appointment during the regular business hours of the Human Resources Office. Such review shall not interfere with the employees' work time and shall be done on the employees' own time.

B. Employees may obtain copies of material in their personnel file. A fee of ~~$0.10~~ **$1.00** per copy up to ~~twenty (20)~~ **ten (10)** pages will be charged. Copies beyond ~~twenty (20)~~ **ten (10)** pages will be provided at ~~$0.25~~ **$0.50** per page.

C. Employees may submit a rebuttal to any material that is placed in the employee's personnel file. Such rebuttal must be submitted within ~~thirty (30)~~ **seven (7)** calendar days of the effective date of the material in question.

D. Employees may request in writing that letters of commendation or certificates of completion of training be placed in their file. The Human Resources Officer shall determine of such material is appropriate for placement in the employee's file.

E. The Human Resource Personnel file is the official employment history of the employee and shall not be purged except by order of an arbitrator or judge of competent jurisdiction.

ARTICLE 18. VACANCIES

A. A vacancy is a vacant budgeted bargaining unit position that the City decides to fill. Such vacancies will be posted within the City organization for a period of five (5) working days. The posting shall contain the title of the position, the qualifications required, and the deadline for individuals to apply. Qualified in-house applicants will be considered before applicants from outside the City organization. All things being equal the in-house applicant will be given preference.

B. Promotions: Employees shall be considered for promotions on the basis of qualifications, performance, and attendance. All things being equal Department Seniority and then City Seniority shall be given preference.

C. Employees applying for a transfer will be considered for a transfer in the same manner as employees applying for promotion.

~~**D. An employee shall not be subject to a probationary period except upon original appointment with the City of Las Vegas.**~~

ARTICLE 19. LEAVES

A. Vacation Leave

Vacation Leave is accrued at the following rates:

1.	0 months – 5 years	8 hours per month
	5 years – 15 years	10 hours per month
	15 years or more	12 hours per month

B. Upon the death of an employee, from natural or accidental causes, 100% of the employee's accrued annual leave shall be converted to a cash payment to be paid to the employee's beneficiary.

C. Sick Leave:

1. Sick leave will be accrued at the rate of eight (8) hours per month.
2. Holidays which occur during sick leave will not be charged to sick leave.
3. Family Medical Leave. Family medical leave will be handled in accordance with Family Medical Leave Act (FMLA).

D. Sick Leave Incentive:

1. Full time employees who use four (4) hours of sick leave or less from January 1, through June 30, will receive eight (8) hours of administrative leave to be used within thirty (30) days.

2. Full-time employees who use four (4) hours of sick leave or less for the period of July 1, through December 31, will receive eight (8) hours administrative leave to be used within thirty (30) days.

E. Bereavement Leave. Emergency annual leave or leave without pay may be granted to an employee to attend the funeral of a relative not included in the "immediate family" group.

1. Employees will be allowed three (3) work days of bereavement leave, in the event of a death in the employee's immediate family for each instance where an employee meets the requirements as outlined in this section. Such leave shall be charged to administrative leave.
2. Additional leave may be granted at the request of the employee. This additional leave shall be charged to sick leave. If the employee does not have any available sick leave, the additional leave shall be charged to annual leave.
3. Immediate family is defined as parent, legal guardian, grandparent, spouse, father in-law, mother in-law, children (to include step-children), sister, brother, or grandchild of the employee.

ARTICLE 20. HOLIDAYS

A. The City Council shall schedule ninety-two hours of holiday leave per year to be designated annually by administrative regulation.

B. Each employee shall be granted eight (8) hours per year (personal holiday) to be used as personal leave for any reason. The entire eight (8) hours must be used at one time. Personal leave must be used before the last payroll ending in December of each year. If not used during the calendar year, said leave will not be carried into the next calendar year and will be forfeited. Personal leave applies only to regular status employees who have completed their probationary period. Such time shall be scheduled subject to the agreement of the employee and his/her supervisor.

ARTICLE 21. LEAVE WITHOUT PAY

A. All requests for leave without pay require ~~approval~~ **a recommendation** from the department head or his/her designee, and any request for leave without pay ~~for two (2) or more weeks~~ requires approval from the City Manager.

~~B.~~ Local Union officers and stewards may be allowed ~~sufficient time off~~ **leave** without pay for legitimate Union business such as Union membership meetings, Union conventions, conferences, seminars, and workshops. Upon approval, the employees shall have the option of utilizing any accumulated vacation in lieu of taking such leave without pay. Such approval shall ~~not be unreasonably withheld nor shall it be unreasonable for management to deny such approval, if management is of the opinion that production or staffing requirements are affected by the employee's absence.~~ **be considered on a case-by-case basis.**

C. Time taken off as leave without pay, in conjunction with paragraph (B), of this section shall be counted as continuous service for calculating seniority.

D. AFSCME Local 2851 officers may use up to 160 hours of combined leave without pay per year as needed to administer, educate, and facilitate the needs and responsibilities of the membership. This leave is subject to the staffing requirements of the City.

ARTICLE 22. FURLOUGH, LAYOFF, AND RECALL

A. Upon determination by the Employer that a layoff or furlough of bargaining unit employees is deemed necessary, the Employer shall prepare and submit to the Union a written plan justifying the need for a layoff or furlough.

B. Prior to any layoff or furlough, the City Manager will meet and confer with the Union to determine if any other cost-cutting measures can be initiated to avoid the layoff or furlough.

C. Within seven (7) working days of receipt of a furlough plan, the Union shall develop a list of bargaining unit employees who will voluntarily participate.

D. Notice: If a layoff or furlough is to be implemented, affected employees shall receive two (2) weeks' written notice.

E. Wages and Benefits: Upon layoff, laid off employees shall have paid in full all due wages, all accrued annual leave and compensatory time.

F. Employees will be laid off in reverse order of seniority, based on total years of continuous service with the City of Las Vegas. Employees who accept a lower paying classification as a result of a reduction in work force, will have recall rights to the previous classification held prior to the reduction in work force.

G. Laid off employees have **recall** priority over employees applying for a promotion on vacancies within the job classification from which they were laid off.

H. Employees on layoff status will be given notice of recall according to the following procedure. The City will advise the employee to be recalled by certified or registered mail. Failure on the part of the employee to provide and maintain the correct mailing address will result in the forfeiture of recall rights.

I. An employee, upon receiving notice of recall will, within five (5) days acknowledge receipt by certified or registered mail or personal service to the Human Resource office advising the City of the date he/she will be available for service. Available date will not be later than fifteen (15) days from the date the employee receives the recall notice. Any employee who fails to meet the deadline identified forfeits all recall rights. An employee shall have ~~twelve (12)~~ **six (6)** months of recall rights from the date of layoff. The Employer has no further obligation to the employee(s) for recall rights following the ~~twelve (12)~~ **six (6)** months of layoff.

ARTICLE 23. SCHEDULING WORK AND LUNCH BREAKS

A. When the Employer is implementing a long-term change (a change of thirty (30) days or more) in work schedule such change(s) will be posted at the appropriate worksite(s) at least five (5) days prior to the effective date of the change.

~~B.~~ The City shall allow two (2) fifteen (15) minute breaks per eight (8) hour shift, which shall be taken on paid time. Break time shall be scheduled by management. Breaks ~~must~~ **shall** be taken at ~~designated break areas, or within one hundred (100) yards of the worksite for employees working away from City facilities.~~ **the worksite or the nearest location to the worksite that provides a restroom facility.**

C. The Employer shall give each employee a lunch break of at least thirty (30) minutes, not to exceed an hour, on non-pay status. Lunch breaks will be scheduled by the immediate supervisor.

ARTICLE 24. OVERTIME/COMPENSATORY TIME

A. Overtime: The Employer shall compensate bargaining unit employees at the rate of one and one-half (1 ½) times the employee's regular hourly rate of pay for hours worked in excess of their normal work week or forty (40) hours (hereinafter referred to as "overtime pay".)

B. Overtime Scheduling: Each department shall maintain and post a class seniority list. Employees shall be offered overtime work on a rotational basis from that list, the first employee on the list being offered the overtime first. If an employee declines the overtime, the next employee on the list will be offered the overtime, etc., until all the employees on the list have been offered the opportunity to work overtime. If all employees decline overtime work the Employer shall assign overtime on a rotational basis in reverse order of the class seniority list.

C. Compensatory Time: At the employee's written request, and the Employer's approval, an employee may accrue up to forty (40) hours of compensatory time off (hereinafter referred to as "comp time"), at the rate of one and one-half (1 ½) hours for each hour of time worked. This is in lieu of overtime pay. The date the comp time may be used is to be agreed upon by the supervisor and the employee.

ARTICLE 25. TRAINING AND EDUCATION

A. Conditions for Full City Payment. Training directed and/or required by the City, shall be paid by the City in full and in accordance with State and City travel policies, as defined by administrative regulations.

B. Conditions for Reimbursement for Job-Related Training. Employees may request City reimbursement toward any training that is not required by the City but is job related. The Department Director may authorize City reimbursement for such training based on how it relates to the employee's job, the availability of funds for the reimbursement, and provided the training does not interfere with the employee's job performance. Reimbursement funds must be requested prior to participating in the training.

C. Amount of City Reimbursement. If the Department Director authorizes reimbursement, the City shall pay up to 75% of the cost of the training, based upon adequate documentation provided the employee shows satisfactory completion of said training.

D. Employee Obligation. As a condition of receiving reimbursement from the City the employee must:

1. Provide documentation to the Department Director indicating the training has been completed with a passing grade of C or better.
2. Employee(s) shall sign an agreement that if he/she should relinquish his/her position with the City for any reason within one (1) year of the completion of the training, the City's contribution toward said training for the past year will be deducted from the employee's final paycheck.

ARTICLE 26. CITYWIDE SAFETY REVIEW COMMITTEE

A. The purpose of the Safety Committee is to review safety policies and recommend modifications as necessary to the City Manager. The Committee shall meet bi-annually. ~~or as required by management and/or at the request of the union representatives.~~ **Management will schedule a meeting in January and July.**

B. In acknowledgment with the City's Safety and Health Policy*, the Safety Committee shall include two bargaining union members.

C. The AFSCME President shall make his/her appointments of the two bargaining members to the Safety Committee.

D. Union members may attend safety meetings on paid status.

*Nothing in the City's Safety and Health Policy shall supersede any provisions and protections afforded to the membership of AFSCME Local 2851in this agreement.

ARTICLE 27. EMPLOYEE PARKING

The Employer will continue to provide employee parking.

ARTICLE 28. MILEAGE AND PER DIEM

Employees required by management to travel out of town to conduct city business will be paid mileage and per diem as required by law. All per diem must be paid to the employees within two (2) weeks of a written request for these funds**, and after completion of travel**.

ARTICLE 29. DWI/DUI - DRUG AND ALCOHOL ISSUES

A. Any employee who is arrested/cited for Driving While Under the Influence of drugs or alcohol shall immediately report the incident to his/her Department Director. If the citation is issued on a non-working day, then the incident shall be reported to his/her Department Director on the first workday after the issuance of the citation.

B. Any employee whose duties and job description require that he/she operate any motorized city-owned vehicle, and who is arrested/cited for Driving While Under the Influence of drugs or alcohol while off-duty, and who does not obtain a limited driver's license pursuant to Section 66-5-35, NMSA 1978 as amended, shall be disciplined as follows:

1. The employee shall be placed on leave without pay on grounds that he/she cannot perform his/her duties as required by the employee's job description until the employee's driver's license has been restored. Restoration of the driver's license must occur within six (6) months from the effective date of the revocation or suspension. Any employee placed on leave without pay pursuant to this section will not receive any City benefits during such absence. Should the employee not have his/her driving privileges restored within six (6) months, the employee shall have provided just cause for termination.
2. If the employee receives a subsequent DWI/DUI citation at any time during employment with the City, the employee shall have provided just cause for termination from employment with the City of Las Vegas.

C. Any employee who is arrested/cited for Driving While Under the Influence of drugs or alcohol, while operating a City-owned motor vehicle, shall not operate a City vehicle. That employee shall have provided just cause for termination.

D. Any employee who is arrested/cited for Driving While Under the Influence of drugs or alcohol, while operating a personal motor vehicle while on City time (during the employee's work day), the employee shall have provided just cause for termination. An employee shall be deemed to be on "City time" even while away from regular work hours if he/she is on "on-call" status.

ARTICLE 30. CLASSIFICATION

A. Consistent with the rights, responsibilities, and obligations of management, the employer will continue to prepare and maintain a Classification Plan which provides for groupings of positions within the City structure. Such classifications are based on the duties, scope of responsibilities, and qualifications.

B. Employees will be provided a copy of any changes that are made to their job description. Nothing shall prevent the employee or the Union from bringing issues related to the employees' job description to the attention of management.

C. Employees will not be required to perform duties that are not related to the employee's assigned classification as a regular assignment. Employees may be required to perform job related duties as necessary or assigned by their supervisor. Qualified employees assigned by their supervisor to perform duties for a higher classification will be paid within the pay range of the higher classification.

ARTICLE 31. STATE CERTIFICATION

A. The City will continue the current practice and policy of paying for annual certification and examination fees **up to a maximum of two examinations for each certification level. Should such examination take place during the**

employee's regular work hours, time required for testing and reasonable travel time and vehicle will be given.

B. Employees required to maintain a state certification as a condition of continued employment will receive mileage and per diem in accordance with the state law when required to travel out of town to take the required training and/or exams.

~~C. Should the employee elect to participate in such training and/or examination again within a calendar year the employee shall assume all costs incurred as a result of a second training and/or examination.~~

ARTICLE 32. RESIGNATION

An employee wishing to resign employment with the City of Las Vegas in good standing shall submit his/her resignation fourteen (14) calendar days prior to the effective date of the resignation. Once a resignation is submitted, an employee may **request to** withdraw his/her resignation by submitting **the request in writing** ~~a written request~~ within forty-eight (48) hours. Upon mutual agreement of the parties, the forty-eight (48) hours standard may be waived.

ARTICLE 33. NEGOTIATING PROCEDURE

Negotiations and impasse resolution will be conducted in accordance with Chapter 48. Labor Management Relations of the City of Las Vegas Code.

ARTICLE 34. NEW EMPLOYEE ORIENTATION

The employer shall provide to the ~~union~~ **Union** a list of all AFSCME eligible employees prior to the **completion** ~~compensation~~ of the employee's six month probation.

The notification will be sent via email to the ~~union~~ **Union** President or his/her designee.

The Union may then schedule a time to meet with the ~~union~~ **Union** eligible employee **on non-work time**.

ARTICLE 35. BENEFITS

A. Medical: The City will pay 75% of the premium for those employees who choose to participate and the employee will pay 25% of the premium.

B. Life Insurance: The City will continue to provide the current coverage.

C. The City will continue to pay its share of the medical insurance premium as required by the Family Medical Leave Act as it relates to employees on approved leave.

ARTICLE 36. INCREMENT PAY/LONGEVITY

The longevity increment pay shall continue for the duration of this agreement. Longevity increment pay will be paid at $0.07 increase to the employee's regular hourly rate of pay on the employee's anniversary date.

ARTICLE 37. COMPENSATION

Effective the first full pay period after ~~July 1, 2016, or following~~ ratification and signature of the Agreement or resolution of impasse, whichever is later. All bargaining unit employees will receive a ~~thirty-five cent ($.35)~~ **seventy-five ($0.75)** increase to the employee's regular hourly rate of pay.

ARTICLE 38. CLOTHING ALLOWANCE/REPLACEMENT

For the period of this ~~agreement~~ **Agreement**, the clothing replacement shall be administered in accordance with Administrative Regulations. The employer will provide **the following every two (2) years:** ~~five (5) pants, five (5) duty shirts, one (1) pair of steel "safety" toe boots and one (1) winter or summer jacket every two (2) years.~~

- **Five (5) pants**
- **Five (5) duty shirts**
- **One (1) pair of safety footwear which meets or exceeds ASTM F2413-17 standards**
- **One (1) waterproof winter or summer jacket**

The employer will provide one (1) winter or summer coverall as required by the employee's job ~~at the discretion of the director~~ **description** every two (2) years.

Uniform items are not intended to be worn outside of work. If the employee can demonstrate to ~~the satisfaction of~~ the director that a ~~uniform(s) is/are~~ **uniform item was** damaged in the line of duty, the employer ~~shall~~ **may** replace it. A clothing allowance of $150.00 will be paid in the off year for ~~the purpose of~~ replacing damaged and/or worn uniforms.

~~It will be mandatory for all regular status~~ **All** employees issued a ~~working~~ uniform ~~to~~ **shall** wear the complete uniform during working hours with the exception of the jacket and maintain a professional appearance.

ARTICLE 39. WHOLE AGREEMENT

A. The parties acknowledge that during negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining and not removed by law, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

B. For the life of this Agreement, each party waives the right and agrees that the other shall not be obligated to bargain collectively with respect to any subject or

matter referred to or covered by this Agreement. However, the matters within this Agreement may be amended during the tern of this Agreement by mutual written agreement or Memorandum of Understanding (MOU).

ARTICLE 40. GENERAL SAVINGS CLAUSE

Should any part of this Agreement or any provision contained herein be declared invalid by the Labor Management Relations Board and/or any court of competent jurisdiction, the validity of the remaining portions shall not be affected and shall remain in full force.

Should this occur, either party, within ten (10) days may request in writing, to meet to negotiate a suitable provision to replace the provision held invalid.

ARTICLE 41. TERM OF THE AGREEMENT

This Agreement shall become effective upon ratification and signature of this Agreement, ~~July 1, 2015~~, or upon resolution of impasse, whichever ~~occurs~~ **is** later, ~~This Agreement will~~ **and shall** remain in full force and effect through June 30, ~~2017~~ **2021**. Either party may request the reopening of negotiations. ~~Reopening of negotiations will include Article 37, Compensation, and one (1) other article identified by each party by submitting written notice to the other party no later than March 1, 2016. By mutual agreement, both parties agreed to address Article 37-Compensation and three (3) other articles. Either party may request to negotiate a successor collective bargaining agreement by submitting written notice to the other party no later than March 1, 2017.~~ **The parties may reopen of negotiations on Article 37, Compensation, and two (2) other articles identified by each party filing written request to open negotiations no later than January 15th of each year the contract is in effect. Negotiations for a successor full collective bargaining agreement will occur upon written request by a party filed no later than January 15, 2021.**

Each party will be provided an electronic copy of the ~~Contact~~ **Contract** in "Word" format.

ARTICLE 42. AUTHORIZED SIGNATURES AND ATTEST

IN WITNESS WHEREOF, the parties have executed the amendments to this Agreement on this

____ day of _____, ~~2016~~ **2018**.

_____ _____

Tonita Gurulé-Girón, Mayor Date

_____ _____

~~Richard Trujillo, City Manager~~ Date

Ann Marie Gallegos, Interim City Manager

_____ _____

~~Floyd Lovato~~, AFSCME Local 2851 President Date
Abraham Maestas

ATTEST:

_____ _____

Cassandra Fresquez, City Clerk Date

AFSCME

American Federation of State, County and Municipal Employees

"Working together to make it better!"

AFSCME LOCAL 2851
and
The City of Las Vegas

November ___, 2018 through June 30, 2021

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ARTICLE 1. PREAMBLE

A. The general purpose of this agreement is to provide for orderly and constructive employee relations in the public interest, in the interest of all employees herein covered, and in the interest of the City; to maintain harmony, cooperation and understanding between the Employer and the employees in the Bargaining Unit; to afford protection of the rights and privileges of Bargaining Unit employees and the Employer; and to ensure the continued delivery of services to the citizens of Las Vegas.

B. The City, the Union, and its members agree that a sincere effort will be made to administer and abide by this agreement in accordance with the negotiated intent terms and provisions for the purpose of maintaining sound labor management relations and consistency with the union's status as exclusive bargaining representative of all employees in the bargaining unit.

ARTICLE 2. RECOGNITION

A. This Agreement (hereinafter referred to as the "Agreement") has been made and entered into by and between the City of Las Vegas, a municipal corporation (hereinafter referred to as the "Employer" or the "City") and Local 2851 of the American Federation of State, County and Municipal Employees, Council 18. AFL-CIO, representative of the City of Las Vegas' Blue and White Collar employees, (hereinafter referred to as the "Union").

B. Chapter 48. Labor Management Relation of the city of Las Vegas' Code was enacted "to guarantee employees the right to organize and bargain collectively with their employer, to protect the rights of the employer and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the rights of citizens to the orderly and uninterrupted delivery of services."

C. This Union is recognized as the exclusive representative for all regular full time city employees regarding all matters pertaining to wages, hours, working conditions, and conditions of employment in the classifications identified in Appendix A and Appendix B of this Agreement.

D. The appropriate bargaining unit shall not include probationary, supervisory, managerial, or confidential employees.

ARTICLE 3. PRIVATIZATION AND CONTRACTING OUT

A. The City agrees that prior to privatizing or contracting out bargaining unit positions, the Union will be allowed to submit input in writing no later than ten (10) working days after the notice from the City. Such written notice shall be presented to the City Manager with a copy delivered to the Human Resources Department. A written response shall be given to the Union no later than ten (10) working days after the receipt.

B. The City agrees that it will notify the Union of any staffing changes that will result in the loss of full time equivalent bargaining unit positions prior to removing those positions from the table of organization.

ARTICLE 4. UNION DUES DEDUCTIONS

Section 1. Payroll Deduction

A. The Employer shall make employee payroll deductions each pay period for:

1. Union membership dues

B. All money deducted from wages under this Article shall be remitted to the Union via the Secretary-Treasurer promptly after the pay day covering the pay period deduction.

C. Payroll deduction authorizations for Union membership dues in the possession of the Employer on the effective date of this Agreement will be honored. The Employer will honor individual payroll deduction authorization forms received after the effective date of the Agreement. The Employer will begin the deduction promptly but in no event, later than one pay period after receipt of the payroll deduction authorization form from the employee or Union.

D. The duty of the Employer to honor payroll deduction authorizations shall continue until the expiration of this Agreement or until otherwise approved by the Union and notification in writing has been given to the employer by a duly authorized officer.

Section 2. Dues Termination and Reimbursement

A. Dues deductions may be terminated at the written request of the employee to the Employer and the Union. The revocation form shall be submitted only between November 1, and November 30, of each year to the Personnel Department and the Union for processing.

B. The Employer shall immediately terminate dues deductions when an employee is transferred out of the bargaining unit or is separated from the City. In the event that dues deductions are to be terminated the Employer shall notify the Union in writing the pay period the termination is effective. Notification shall include the names of the employees whose deductions are being terminated, whether they are dues members and the reason for termination.

C. If in the event a reimbursement is owed to an employee due to a transfer out of the bargaining unit, the employee shall inform the Secretary-Treasurer, in writing, no later than thirty (30) calendar days after the effective date of the transfer, and provide support documentation indicating the pay periods, amount, and reason for the reimbursement.

Section 3. Dues Amounts

A. In accordance with the AFSCME Constitution, per capita tax payments increase every year; therefore dues and fair share deductions are increased accordingly. Beginning the last pay period in December of each calendar year for the duration of this Agreement, the dues/fair share deductions shall increase by an amount to

be set forth in writing by the Union to the Employer from a duly authorized officer.

B. The increase(s) shall take effect the last pay period in December for the following year.

C. If an employee has insufficient earnings for the pay period, no payroll deductions will be made for that employee for that pay period.

D. The Union shall indemnify and hold the Employer harmless for any employee claims involving deductions under this article.

ARTICLE 5. UNION RIGHTS

A. The Union has the right to elect and/or appoint its Union staff, officials, and stewards.

1. The Union President must provide the City Management Team a list by July 1st of each year and within five (5) days of any changes along with their contact information and scope of authority and only the people on the list will be recognized as union officers, stewards and trustees.

B. The Union officials and stewards may engage in activities and conduct business regarding the negotiations and administration of this Agreement. Such activities will not interfere with the employee's work and shall not be performed during employee's work time except in such circumstances to permit the employee to contact a Union steward or official, time not to exceed five (5) minutes. Union officers/stewards shall be allowed reasonable access and time at the worksites to update bargaining unit employees on Union issues.

C. The employer will provide the space, and the Union will provide the bulletin board to be used for Union official business and notices. The bulletin board shall not be used to criticize the Union, its officers, members, elected city officials, management, or other city employees.

D. City facilities commonly used by other civic organizations will also be available for Union activities subject to the same conditions as the civic organizations.

E. City bargaining unit employees may be granted vacation or leave without pay for union business, with five (5) days prior notice, subject to staffing requirements.

F. The City Manager shall budget 90 hours of Labor Management Relation Administrative Leave and the employer shall allow the Union President or Vice President and the Chief steward who are employees (hereinafter referred to as "Employee Officials") to attend meetings on paid status. Meetings agreed to by both parties.

G. The Union President or the Vice President may request approval for the use of Labor-Management Relations Administrative Leave to attempt to resolve a labor management relations issue (potential grievance) that is of mutual concern to the Union and the City Manager. This leave shall be made on the City's regular leave form and is subject to the approval of the City Manager.

ARTICLE 6. MANAGEMENT RIGHTS

The Employer's rights shall include, but are not limited to the following:

A. To direct and supervise all operations, functions, and the work of the employees;
B. To hire, layoff, promote, demote, assign, reassign, transfer, discipline, and discharge employees;
C. To determine what, by whom, and when services will be rendered to the citizens;
D. To determine staffing requirements, to create or abolish positions, or to eliminate or reorganize work units;
E. To determine the need for the qualifications of new employees, to determine the qualifications for positions, and to determine qualifications of employees to be considered for transfer or promotion;
F. To take action as necessary to carry out the mission of the Employer in emergencies; and
G. The employer retains all rights not specifically limited by this Collective Bargaining Agreement.

ARTICLE 7. NON-DISCRIMINATION AND SEXUAL HARASSMENT

The parties agree that they will not practice nor tolerate discrimination because of race, color, religion, sex, ancestry, national origin, age, disability, marital status, union or non-union membership, union activity, or political affiliation. Sexual harassment will also not be tolerated by the parties.

ARTICLE 8. SENIORITY

A. City Seniority
City Seniority for the purpose of this agreement is defined as length of continuous service from the last date of hire with the City of Las Vegas. Continuous service shall not be considered to have been interrupted by periods of approved leave without pay or an approved leave of absence.

B. Department Seniority
Department Seniority is the length of continuous service an employee has in their current department. Department Seniority is broken by voluntary assignment to another department.

C. Classification Seniority
Classification Seniority is defined as the length of continuous service employees have in their current classification. Classification Seniority begins as of the date of employment in the current classification. Voluntary reassignment, voluntary transfer, voluntary promotion, resignation or termination breaks Classification Seniority.

D. It is recognized by the parties that seniority will be applied, as required by law, for returning from military leave.

ARTICLE 9. DISCIPLINARY ACTION

A. Counseling sessions conducted by supervisors are primarily for the purpose of correcting performance or behavior that is below acceptable standards. Counseling discussions are not part of the disciplinary process as defined in C. below and such counseling will not be documented in the employee's official Human Resources file unless it becomes part of an official disciplinary action taken by management. The supervisor shall retain a dated record of such meeting in a working file and provide HR a copy to keep in a separate file.

B. Disciplinary action will be based on just cause. The degree of discipline will be based on the frequency and severity of the infraction, with the exception of any safety related incidents that may cause serious injury/death to self or others.

C. Employer may impose any disciplinary action or issue a notice of contemplated action no later than forty-five (45) days after it acquires knowledge of the employee's misconduct for which the disciplinary action is imposed, unless facts and circumstances exist which require a longer period of time. In such cases, the employee will be notified.

D. Types of discipline:

a. Written Warning
b. Letter of Reprimand
c. Suspension from work without pay
d. Demotions
e. Dismissal/Discharge for cause
f. Progressive Discipline may be used when management believes such method is appropriate. Written Warning will not be used for progressive discipline after one (1) year. Letter of Reprimand will not be used for progressive discipline after two (2) years. This shall in no way prevent the employer from taking severe disciplinary action including dismissal/discharge on the first offense.
g. An employee against whom disciplinary action is contemplated (under Section D subsections c-e as stated above) will be provided with written charges and afforded the opportunity to respond to the charges prior to the implementation of any disciplinary action by management. Written charges will be presented to the employee once management believes it has sufficient information to proceed with charges against the employee.
h. Disciplinary action as defined in D subsections c-e above may be appealed by the affected employee through the grievance and appeal process as provided in the Agreement under Article 10.
i. If the appeal of the disciplinary action is not satisfactorily resolved at the City Manager level, it may be submitted to final and binding arbitration as per Article 10 of this agreement.
j. If no appeal is requested, the disciplinary action shall be final subject to review by the Human Resource Director/Officer and is subject to the approval and signature of the City Manager.

ARTICLE 9-I. COMPLIANCE WITH LAWS

Written personnel policies and procedures shall be reasonably applied to all employees. Accommodations made to persons determined by the Employer to be qualified individuals with a disability shall not serve as precedent for other employees. With the exception of personnel policies and procedures dealing with compliance with the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Age Discrimination and Employment Act (ADEA), the Family and Medical Leave At (FMLA), the Equal Pay Act (EPA), and all other applicable federal and state equal employment opportunity laws and regulations, alleged violations of this article may be grieved in accordance with the Grievance Procedure.

ARTICLE 10. GRIEVANCE, APPEAL, AND ARBITRATION PROCEDURE

A. Grievance is defined as a written formal complaint alleging a violation, misapplication, or misinterpretation of any of the provisions of this Agreement or City Personnel Rules and Regulations. Appeal of suspension, demotion or discharge only shall also be accomplished through this process.

B. Grievances/appeals shall be filed by the individual employees or by the exclusive representative on behalf of an individual employee or a group of employees. The grievance/appeal shall be signed by the aggrieved employee or employees.

C. An individual employee may present a grievance/appeal under the provisions of this Article without the intervention of the Union and have the grievance/appeal adjusted as long as (1) the adjustment is consistent with the terms of this Agreement, and (2) the employee is responsible for all expenses incurred at any hearing or meeting on a grievance/appeal brought by the individual employee. If the employee elects to bring a representative other than the Union to the grievance/appeal, then the City will require a written waiver of representation from the Union in the action. The Union shall be afforded the opportunity to be present and make its views known. In a situation where the employee has elected not to use the Union's services, and is requesting arbitration the employer and the employee shall deposit $6000.00 each in an escrow account for the payment of arbitration.

D. The written grievance/appeal shall include:

   a. The employee/grievant's name, job, title, department;
   b. The representative/steward's name, address and telephone number;
   c. The Article(s) of this Agreement or section of the Personnel Rules and Regulations alleged to have been violated;
   d. The date the incident or violation occurred;
   e. The Management employee, if any, against whom the action is filed;
   f. A description of the alleged violation providing more than just the Article or Section identification.
   g. If the phrase "to be made whole" is used in the relief requested, the grievant shall specify what specific relief is desired. The relief

requested shall include a specific statement describing the grievant's settlement request; and

h. The signature and date of the grievant and the Union representative.

E. The original written grievance/appeal shall be presented to the employee's Department Head with a copy provided to Human Resources within ten (10) working days of the date the employee knew or reasonably should have known of the issue that generated the grievance/appeal. If the grievance/appeal is not resolved within ten (10) working days of the date the grievance/appeal was filed with the department head, the grievance/appeal may be advanced to the City Manager.

F. If the issue is not resolved at the Department Head level, the grievance/appeal may be advanced to the City Manager by presenting the written grievance/appeal to the City Manager within fifteen (15) working days of the filing with the Department Head. This means within fifteen (15) working days of the initial filing of the grievance/appeal with the Department Head. The parties will mutually agree on a date, time, and place to meet and attempt to resolve the grievance/appeal. If the issue is not resolved within ten (10) working days of the filing with the City Manager, the grievance/appeal may be advanced to arbitration.

G. The grievance/appeal is advanced to arbitration by presenting such written notice to the City Manager within fifteen (15) working days of the initial filing at the City Manager level.

H. Within ten (10) working days of the filing of the written notice of advancement to arbitration, a request for a list of arbitrators for the NM region from the Federal Mediation and Conciliation Service (FMCS) shall be submitted by the Union. Within ten (10) working days of receipt of the arbitrator list, the parties shall meet to select an arbitrator.

I. The selection of the arbitrator shall be accomplished by the parties alternating striking of names until only one name remains. The remaining name shall be the arbitrator. Who strikes the first name is determined by the flip of a coin.

J. The Arbitrator shall render a final and binding decision containing findings of fact and conclusions of law within 30 days of the close of the hearing. This decision of the arbitrator is subject to judicial review in accordance with the New Mexico Uniform Arbitration Act. The parties shall share the cost of the arbitrator equally.

K. The Arbitrator's duties, responsibilities, and limitations are governed by the City's Labor Management Relations Ordinance.

L. This is the only internal grievance and appeal process available to bargaining unit employees.

M. Working day is defined as days that the administrative offices of the City are open for business. Any deadline that falls on a day that the administrative offices of the City are not open for regular business shall extend into the next day that the City Administrative Offices are open for business.

ARTICLE 11. CALL-IN COMPENSATION

When an employee is called in and required to work for an emergency prior to the beginning of the employee's normal work day, or is called back after the conclusion of the employee's normal work day, the employee will be guaranteed the greater of:

Two (2) hours straight time rate on scheduled work days, and three (3) hours straight time rate on non-scheduled work days

Or

Time and one-half (1 ½) for the actual time worked if such hours exceed forty (40) hours actually worked for the week.

Scheduled work day shall mean a day the employee is normally scheduled to work beginning at 12:01 AM through midnight.

Additional calls that occur during the minimum two (2) hours compensated time are included in the two (2) hours paid. A total of thirty (30) minutes travel time to and from the employee's home shall be considered time worked. Time will begin when the employee receives the assignment and must leave for the assignment within fifteen (15) minutes of being called.

Management acknowledges that it is their responsibility to ensure that call-in compensation is not abused by the employee. Any abuse will be subject to disciplinary action up to and including termination.

ARTICLE 12. ON-CALL ASSIGNMENTS

Employees assigned to On-Call status for a period of seven (7) consecutive days will be paid six (6) hours at straight time for the on-call assignment. These hours will not be used for computing overtime compensation. Such employees must be ready and available to respond to deliver City services during the non-duty On-Call assignment. Failure to respond will result in loss of on-call pay and disciplinary action.

ARTICLE 13. REST PERIOD

A. Bargaining unit employees shall not be required to work in excess of sixteen (16) consecutive hours.

B. If an employee is required to work sixteen (16) consecutive hours, he/she is guaranteed an eight (8) hour unpaid rest period immediately following the sixteen (16) consecutive hours. Vacation leave may be substituted for the unpaid time.

C. If the employee feels that he/she cannot report to work on a designated Emergency and safely perform his/her duties, they shall not be penalized.

D. If an employee is called out to work a designated emergency after scheduled work hours or on holidays, work shall be paid at time and one half the normal rate of pay, even if the employee works less than forty (40) hours that week.

ARTICLE 14. LABOR MANAGEMENT MEETINGS

A. The parties will establish a labor management committee. The Committee will meet on an as needed basis, or at least once quarterly to discuss issues of mutual concern that relate to the administration of this agreement. The Union and the Employer will each appoint two individuals to this committee. The individuals will be identified to the other party in writing for each meeting. The date, time and place of such meeting shall be by mutual agreement of the parties.

B. This committee has no authority to negotiate any changes to this Agreement.

ARTICLE 15. SAFETY

Safety is an integral part of the responsibilities of all employees. The employer will continue to provide healthful and safe working conditions. Employees shall comply with such rules, regulations, and practices as may be prescribed for the conduct of employees in order to provide a safe work environment, in acknowledgment with the City's Safety and Health Policy.* The employee shall notify his/her immediate supervisor immediately of any unsafe or hazardous working conditions or workplace injury or accident. The Employer will take appropriate action to correct unsafe or hazardous working conditions as required by law. The parties will meet to discuss health and safety issues of mutual concern. The time and place for the meetings will be set by mutual agreement of the parties. The Employer, through the Safety Office, will provide safety training on an as needed basis.

*Nothing in the City's Safety and Health Policy shall supersede any provisions and protections afforded to the membership of AFSCME Local 2851 in this agreement.

ARTICLE 16. SAFETY AIDS

The City shall provide Safety Aids needed by employees in the performance of all job related duties. This may include items such as: hard hats, gloves, earplugs, safety glasses, and safety vests.

Rain gear will be provided for employees whose duties are such that they will incur the outdoor elements. Department Directors will determine the type of rain gear needed for their individual department needs, which will be no less than a rain poncho.

A five (5) gallon water container with cold water will be provided to all crews working away from the City facilities.

ARTICLE 17. PERSONNEL RECORDS

A. The employees' Official Personnel files will be maintained in the Human Resources Office. Employees, or their designee by written authorization, may review the employees' files by appointment during the regular business hours of the Human Resources Office. Such review shall not interfere with the employees' work time and shall be done on the employees' own time.

B. Employees may obtain copies of material in their personnel file. A fee of $1.00 per copy up to ten (10) pages will be charged. Copies beyond ten (10) pages will be provided at $0.50 per page.

C. Employees may submit a rebuttal to any material that is placed in the employee's personnel file. Such rebuttal must be submitted within seven (7) calendar days of the effective date of the material in question.

D. Employees may request in writing that letters of commendation or certificates of completion of training be placed in their file. The Human Resources Officer shall determine of such material is appropriate for placement in the employee's file.

E. The Human Resource Personnel file is the official employment history of the employee and shall not be purged except by order of an arbitrator or judge of competent jurisdiction.

ARTICLE 18. VACANCIES

A. A vacancy is a vacant budgeted bargaining unit position that the City decides to fill. Such vacancies will be posted within the City organization for a period of five (5) working days. The posting shall contain the title of the position, the qualifications required, and the deadline for individuals to apply. Qualified in-house applicants will be considered before applicants from outside the City organization. All things being equal the in-house applicant will be given preference.

B. Promotions: Employees shall be considered for promotions on the basis of qualifications, performance, and attendance. All things being equal Department Seniority and then City Seniority shall be given preference.

C. Employees applying for a transfer will be considered for a transfer in the same manner as employees applying for promotion.

ARTICLE 19. LEAVES

A. Vacation Leave

Vacation Leave is accrued at the following rates:

1. 0 months – 5 years — 8 hours per month
   5 years – 15 years — 10 hours per month
   15 years or more — 12 hours per month

B. Upon the death of an employee, from natural or accidental causes, 100% of the employee's accrued annual leave shall be converted to a cash payment to be paid to the employee's beneficiary.

C. Sick Leave:

1. Sick leave will be accrued at the rate of eight (8) hours per month.
2. Holidays which occur during sick leave will not be charged to sick leave.

3. Family Medical Leave. Family medical leave will be handled in accordance with Family Medical Leave Act (FMLA).

D. Sick Leave Incentive:

1. Full time employees who use four (4) hours of sick leave or less from January 1, through June 30, will receive eight (8) hours of administrative leave to be used within thirty (30) days.
2. Full-time employees who use four (4) hours of sick leave or less for the period of July 1, through December 31, will receive eight (8) hours administrative leave to be used within thirty (30) days.

E. Bereavement Leave. Emergency annual leave or leave without pay may be granted to an employee to attend the funeral of a relative not included in the "immediate family" group.

1. Employees will be allowed three (3) work days of bereavement leave, in the event of a death in the employee's immediate family for each instance where an employee meets the requirements as outlined in this section. Such leave shall be charged to administrative leave.
2. Additional leave may be granted at the request of the employee. This additional leave shall be charged to sick leave. If the employee does not have any available sick leave, the additional leave shall be charged to annual leave.
3. Immediate family is defined as parent, legal guardian, grandparent, spouse, father in-law, mother in-law, children (to include step-children), sister, brother, or grandchild of the employee.

ARTICLE 20. HOLIDAYS

A. The City Council shall schedule ninety-two hours of holiday leave per year to be designated annually by administrative regulation.

B. Each employee shall be granted eight (8) hours per year (personal holiday) to be used as personal leave for any reason. The entire eight (8) hours must be used at one time. Personal leave must be used before the last payroll ending in December of each year. If not used during the calendar year, said leave will not be carried into the next calendar year and will be forfeited. Personal leave applies only to regular status employees who have completed their probationary period. Such time shall be scheduled subject to the agreement of the employee and his/her supervisor.

ARTICLE 21. LEAVE WITHOUT PAY

A. All requests for leave without pay require a recommendation from the department head or his/her designee, and any request for leave without pay requires approval from the City Manager.

B. Local Union officers and stewards may be allowed leave without pay for legitimate Union business such as Union membership meetings, Union conventions, conferences, seminars, and workshops. Upon approval, the

employees shall have the option of utilizing any accumulated vacation in lieu of taking such leave without pay. Such approval shall be considered on a case-by-case basis.

C. Time taken off as leave without pay, in conjunction with paragraph (B), of this section shall be counted as continuous service for calculating seniority.

D. AFSCME Local 2851 officers may use up to 160 hours of combined leave without pay per year as needed to administer, educate, and facilitate the needs and responsibilities of the membership. This leave is subject to the staffing requirements of the City.

ARTICLE 22. FURLOUGH, LAYOFF, AND RECALL

A. Upon determination by the Employer that a layoff or furlough of bargaining unit employees is deemed necessary, the Employer shall prepare and submit to the Union a written plan justifying the need for a layoff or furlough.

B. Prior to any layoff or furlough, the City Manager will meet and confer with the Union to determine if any other cost-cutting measures can be initiated to avoid the layoff or furlough.

C. Within seven (7) working days of receipt of a furlough plan, the Union shall develop a list of bargaining unit employees who will voluntarily participate.

D. Notice: If a layoff or furlough is to be implemented, affected employees shall receive two (2) weeks' written notice.

E. Wages and Benefits: Upon layoff, laid off employees shall have paid in full all due wages, all accrued annual leave and compensatory time.

F. Employees will be laid off in reverse order of seniority, based on total years of continuous service with the City of Las Vegas. Employees who accept a lower paying classification as a result of a reduction in work force, will have recall rights to the previous classification held prior to the reduction in work force.

G. Laid off employees have recall priority over employees applying for a promotion on vacancies within the job classification from which they were laid off.

H. Employees on layoff status will be given notice of recall according to the following procedure. The City will advise the employee to be recalled by certified or registered mail. Failure on the part of the employee to provide and maintain the correct mailing address will result in the forfeiture of recall rights.

I. An employee, upon receiving notice of recall will, within five (5) days acknowledge receipt by certified or registered mail or personal service to the Human Resource office advising the City of the date he/she will be available for service. Available date will not be later than fifteen (15) days from the date the employee receives the recall notice. Any employee who fails to meet the deadline identified forfeits all recall rights. An employee shall have six (6) months of recall rights from the date of layoff. The Employer has no further obligation to the employee(s) for recall rights following the six (6) months of layoff.

ARTICLE 23. SCHEDULING WORK AND LUNCH BREAKS

A. When the Employer is implementing a long-term change (a change of thirty (30) days or more) in work schedule such change(s) will be posted at the appropriate worksite(s) at least five (5) days prior to the effective date of the change.

B. The City shall allow two (2) fifteen (15) minute breaks per eight (8) hour shift, which shall be taken on paid time. Break time shall be scheduled by management. Breaks shall be taken at the worksite or the nearest location to the worksite that provides a restroom facility.

C. The Employer shall give each employee a lunch break of at least thirty (30) minutes, not to exceed an hour, on non-pay status. Lunch breaks will be scheduled by the immediate supervisor.

ARTICLE 24. OVERTIME/COMPENSATORY TIME

A. Overtime: The Employer shall compensate bargaining unit employees at the rate of one and one-half (1 ½) times the employee's regular hourly rate of pay for hours worked in excess of their normal work week or forty (40) hours (hereinafter referred to as "overtime pay".)

B. Overtime Scheduling: Each department shall maintain and post a class seniority list. Employees shall be offered overtime work on a rotational basis from that list, the first employee on the list being offered the overtime first. If an employee declines the overtime, the next employee on the list will be offered the overtime, etc., until all the employees on the list have been offered the opportunity to work overtime. If all employees decline overtime work the Employer shall assign overtime on a rotational basis in reverse order of the class seniority list.

C. Compensatory Time: At the employee's written request, and the Employer's approval, an employee may accrue up to forty (40) hours of compensatory time off (hereinafter referred to as "comp time"), at the rate of one and one-half (1 ½) hours for each hour of time worked. This is in lieu of overtime pay. The date the comp time may be used is to be agreed upon by the supervisor and the employee.

ARTICLE 25. TRAINING AND EDUCATION

A. Conditions for Full City Payment. Training directed and/or required by the City, shall be paid by the City in full and in accordance with State and City travel policies, as defined by administrative regulations.

B. Conditions for Reimbursement for Job-Related Training. Employees may request City reimbursement toward any training that is not required by the City but is job related. The Department Director may authorize City reimbursement for such training based on how it relates to the employee's job, the availability of funds for the reimbursement, and provided the training does not interfere with the employee's job performance. Reimbursement funds must be requested prior to participating in the training.

C. Amount of City Reimbursement. If the Department Director authorizes reimbursement, the City shall pay up to 75% of the cost of the training, based upon adequate documentation provided the employee shows satisfactory completion of said training.

D. Employee Obligation. As a condition of receiving reimbursement from the City the employee must:

1. Provide documentation to the Department Director indicating the training has been completed with a passing grade of C or better.
2. Employee(s) shall sign an agreement that if he/she should relinquish his/her position with the City for any reason within one (1) year of the completion of the training, the City's contribution toward said training for the past year will be deducted from the employee's final paycheck.

ARTICLE 26. CITYWIDE SAFETY REVIEW COMMITTEE

A. The purpose of the Safety Committee is to review safety policies and recommend modifications as necessary to the City Manager. The Committee shall meet bi-annually. Management will schedule a meeting in January and July.

B. In acknowledgment with the City's Safety and Health Policy*, the Safety Committee shall include two bargaining union members.

C. The AFSCME President shall make his/her appointments of the two bargaining members to the Safety Committee.

D. Union members may attend safety meetings on paid status.

*Nothing in the City's Safety and Health Policy shall supersede any provisions and protections afforded to the membership of AFSCME Local 2851in this agreement.

ARTICLE 27. EMPLOYEE PARKING

The Employer will continue to provide employee parking.

ARTICLE 28. MILEAGE AND PER DIEM

Employees required by management to travel out of town to conduct city business will be paid mileage and per diem as required by law. All per diem must be paid to the employees within two (2) weeks of a written request for these funds, and after completion of travel.

ARTICLE 29. DWI/DUI - DRUG AND ALCOHOL ISSUES

A. Any employee who is arrested/cited for Driving While Under the Influence of drugs or alcohol shall immediately report the incident to his/her Department Director. If the citation is issued on a non-working day, then the incident shall be reported to his/her Department Director on the first workday after the issuance of the citation.

B. Any employee whose duties and job description require that he/she operate any motorized city-owned vehicle, and who is arrested/cited for Driving While Under the Influence of drugs or alcohol while off-duty, and who does not obtain a limited driver's license pursuant to Section 66-5-35, NMSA 1978 as amended, shall be disciplined as follows:

1. The employee shall be placed on leave without pay on grounds that he/she cannot perform his/her duties as required by the employee's job description until the employee's driver's license has been restored. Restoration of the driver's license must occur within six (6) months from the effective date of the revocation or suspension. Any employee placed on leave without pay pursuant to this section will not receive any City benefits during such absence. Should the employee not have his/her driving privileges restored within six (6) months, the employee shall have provided just cause for termination.
2. If the employee receives a subsequent DWI/DUI citation at any time during employment with the City, the employee shall have provided just cause for termination from employment with the City of Las Vegas.

C. Any employee who is arrested/cited for Driving While Under the Influence of drugs or alcohol, while operating a City-owned motor vehicle, shall not operate a City vehicle. That employee shall have provided just cause for termination.

D. Any employee who is arrested/cited for Driving While Under the Influence of drugs or alcohol, while operating a personal motor vehicle while on City time (during the employee's work day), the employee shall have provided just cause for termination. An employee shall be deemed to be on "City time" even while away from regular work hours if he/she is on "on-call" status.

ARTICLE 30. CLASSIFICATION

A. Consistent with the rights, responsibilities, and obligations of management, the employer will continue to prepare and maintain a Classification Plan which provides for groupings of positions within the City structure. Such classifications are based on the duties, scope of responsibilities, and qualifications.

B. Employees will be provided a copy of any changes that are made to their job description. Nothing shall prevent the employee or the Union from bringing issues related to the employees' job description to the attention of management.

C. Employees will not be required to perform duties that are not related to the employee's assigned classification as a regular assignment. Employees may be required to perform job related duties as necessary or assigned by their supervisor. Qualified employees assigned by their supervisor to perform duties for a higher classification will be paid within the pay range of the higher classification.

ARTICLE 31. STATE CERTIFICATION

A. The City will continue the current practice and policy of paying for annual certification and examination fees up to a maximum of two examinations for each certification level. Should such examination take place during the employee's regular work hours, time required for testing and reasonable travel time and vehicle will be given.

B. Employees required to maintain a state certification as a condition of continued employment will receive mileage and per diem in accordance with the state law when required to travel out of town to take the required training and/or exams.

ARTICLE 32. RESIGNATION

An employee wishing to resign employment with the City of Las Vegas in good standing shall submit his/her resignation fourteen (14) calendar days prior to the effective date of the resignation. Once a resignation is submitted, an employee may request to withdraw his/her resignation by submitting the request in writing within forty-eight (48) hours. Upon mutual agreement of the parties, the forty-eight (48) hours standard may be waived.

ARTICLE 33. NEGOTIATING PROCEDURE

Negotiations and impasse resolution will be conducted in accordance with Chapter 48. Labor Management Relations of the City of Las Vegas Code.

ARTICLE 34. NEW EMPLOYEE ORIENTATION

The employer shall provide to the Union a list of all AFSCME eligible employees prior to the completion of the employee's six month probation.

The notification will be sent via email to the Union President or his/her designee.

The Union may then schedule a time to meet with the Union eligible employee on non-work time.

ARTICLE 35. BENEFITS

A. Medical: The City will pay 75% of the premium for those employees who choose to participate and the employee will pay 25% of the premium.
B. Life Insurance: The City will continue to provide the current coverage.
C. The City will continue to pay its share of the medical insurance premium as required by the Family Medical Leave Act as it relates to employees on approved leave.

ARTICLE 36. INCREMENT PAY/LONGEVITY

The longevity increment pay shall continue for the duration of this agreement. Longevity increment pay will be paid at $0.07 increase to the employee's regular hourly rate of pay on the employee's anniversary date.

ARTICLE 37. COMPENSATION

Effective the first full pay period after ratification and signature of the Agreement or resolution of impasse, whichever is later. All bargaining unit employees will receive a seventy-five ($0.75) increase to the employee's regular hourly rate of pay.

ARTICLE 38. CLOTHING ALLOWANCE/REPLACEMENT

For the period of this Agreement, the clothing replacement shall be administered in accordance with Administrative Regulations. The employer will provide the following every two (2) years:

- Five (5) pants
- Five (5) duty shirts
- One (1) pair of safety footwear which meets or exceeds ASTM F2413-17 standards
- One (1) waterproof winter or summer jacket

The employer will provide one (1) winter or summer coverall as required by the employee's job description every two (2) years.

Uniform items are not intended to be worn outside of work. If the employee can demonstrate to the director that a uniform item was damaged in the line of duty, the employer may replace it. A clothing allowance of $150.00 will be paid in the off year for replacing damaged and/or worn uniforms.

All employees issued a uniform shall wear the complete uniform during working hours with the exception of the jacket and maintain a professional appearance.

ARTICLE 39. WHOLE AGREEMENT

A. The parties acknowledge that during negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining and not removed by law, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

B. For the life of this Agreement, each party waives the right and agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement. However, the matters within this Agreement may be amended during the tern of this Agreement by mutual written agreement or Memorandum of Understanding (MOU).

ARTICLE 40. GENERAL SAVINGS CLAUSE

Should any part of this Agreement or any provision contained herein be declared invalid by the Labor Management Relations Board and/or any court of competent jurisdiction, the validity of the remaining portions shall not be affected and shall remain in full force.

Should this occur, either party, within ten (10) days may request in writing, to meet to negotiate a suitable provision to replace the provision held invalid.

ARTICLE 41. TERM OF THE AGREEMENT

This Agreement shall become effective upon ratification and signature of this Agreement or upon resolution of impasse, whichever is later, and shall remain in full force and effect through June 30, 2021. Either party may request the reopening of negotiations. The parties may reopen of negotiations on Article 37, Compensation, and two (2) other articles identified by each party filing written request to open negotiations no later than January 15th of each year the contract is in effect. Negotiations for a successor full collective bargaining agreement will occur upon written request by a party filed no later than January 15, 2021.

Each party will be provided an electronic copy of the Contract in "Word" format.

ARTICLE 42. AUTHORIZED SIGNATURES AND ATTEST

IN WITNESS WHEREOF, the parties have executed the amendments to this Agreement on this

____ day of _____, 2018.

_____	_____
Tonita Gurulé-Girón, Mayor	Date
_____	_____
Ann Marie Gallegos, Interim City Manager	Date
_____	_____
Abraham Maestas, AFSCME Local 2851 President	Date

ATTEST:

_____	_____
Cassandra Fresquez, City Clerk	Date

Approved as to legal sufficiency only:

Esther Garduno-Montoya, City Attorney	Date

Regular or Special
CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/7/18 **DEPT:** Executive **MEETING DATE**: 11/20/18

ITEM/TOPIC: Salary Increase for all non-bargaining unit employees.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval for a salary increase of seventy five cents ($0.75) to the regular hourly rate of pay for all non-bargaining unit employees, including part time employees with at least one year of continuous employment with the City, effective the first full pay period after Council's approval.

BACKGROUND/RATIONALE: City of Las Vegas has budgeted for the proposed salary increase. The proposed increase is commensurate with increases to AFSCME and IAFF employees.

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR (PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

ESTHER GARDUNO MONTOYA, CITY ATTORNEY (ALL CONTRACTS, ORDINANCES AND RESOLUTIONS MUST BE REVIEWED)

Revised 9/18

Non-bargaining unit employees have not received a raise in two years.

A review of budgets indicate that the cost of a raise for non-bargaining unit employees can easily be funded this year.

The cost of recommended raise will be shared by the General Fund, Enterprises and include Housing employees.

Regular or Special
CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/13/18 **DEPT: City Clerk/City Attorney** **MEETING DATE**: 11/20/18

ITEM/TOPIC: Publication of Ordinance No. 18-08, Cable Franchise Agreement.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval to publish Ordinance No. 18-08, an ordinance granting a franchise to Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC.

BACKGROUND/RATIONALE: The last cable franchise agreement approved by Council was in 1997. Attorney Danelle Smith has reviewed and approved the attached cable franchise agreement. Ms. Erin Muffoletto with Comcast will be present at meeting to answer questions regarding the proposed franchise agreement. If approved to publish, the ordinance will be brought to Council in December for a public hearing and adoption of the ordinance.

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULÉ-GIRÓN
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR (PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

ESTHER GARDUNO MONTOYA, CITY ATTORNEY (ALL CONTRACTS, ORDINANCES AND RESOLUTIONS MUST BE REVIEWED)

Revised 9/18

DRAFT

COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC
AND
CITY OF LAS VEGAS, NEW MEXICO

CABLE FRANCHISE AGREEMENT

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COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC
AND
CITY OF LAS VEGAS, NEW MEXICO

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.2 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.3 "Applicable Law" means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.4 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.5 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.6 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.7 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.8 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.9 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.10 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.11 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.12 "City" is the City of Las Vegas New Mexico, a body politic and corporate under the laws of the State of New Mexico.

1.13 "City Council" means the Las Vegas City Council, or its successor, the governing body of the City of Las Vegas, New Mexico.

1.14 "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

1.16 "Digital Starter Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.17 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.18 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.19 "Effective Date" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.20 "FCC" means the Federal Communications Commission.

1.21 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.22 "Franchise" means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.23 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.24 "Franchise Fee" means that fee payable to the City described in subsection 3.1.

1.25 "Grantee" means Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC or its lawful successor, transferee or assignee.

1.26 "Gross Revenues" means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;

- fees paid to Grantee for channels designated for commercial/Leased Access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;

- Advertising Revenues as defined herein;

- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;

- revenues from program guides;

- Franchise Fees;

- FCC Regulatory Fees; and,

- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;

- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;

- launch fees and marketing co-op fees; and,

- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.26 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.26(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.27 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.28 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.29 "Manager" means the City Manager of the City or designee.

1.30 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.31 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.32 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.33 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, right-of-way and similar public property and areas.

1.34 "State" means the State of New Mexico.

1.35 "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.36 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.38 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.39 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.40 "Two-Way" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.41 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the

terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 1.19.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise. All ordinances or parts of ordinances or Municipal Code that are in conflict with or otherwise impose obligations different from the provisions of this Franchise are superseded by this Franchise. Notwithstanding any other provision of this Franchise, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the City that conflicts with its contractual rights under this Franchise, either now or in the future.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Right-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Right-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Right-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Right-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Right-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Right-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Right-of-Way, including the specific location of facilities in the Right-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Right-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Right-of-Way through joint trenching and other arrangements.

2.3 Term of Franchise

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon

the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act, or is extended by mutual agreement of the City and Grantee.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) Purposes. The Grantee and the City acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public Right-of-Way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Grantee and the City have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

(B) New Video Service Provider. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i) enters into any agreement with the City to provide video services to subscribers in the City, or (ii) otherwise begins to provide video services to subscribers in the City (with or without entering into an agreement with the City), the City, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the City under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the City.

(C) If there is no written agreement or other authorization between the new VSP and the City, the Grantee and the City shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the City.

(D) Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to subscribers in the City, or that otherwise changes the nature or extent of the obligations that the City may request from or impose on a VSP providing video services to subscribers in the City, the City agrees that, notwithstanding any other provision of law, upon Grantee's written request the City shall: (i) permit the Grantee to provide video services to subscribers in the City on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the City. The City and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the City. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

(E) Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the City under Sections 2.6B, 2.6C or 2.6D shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the City, without penalty or damages.

(F) The term "Video Service Provider" or "VSP" shall mean any entity using the public Right-of-Way to provide multiple video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel

multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Right-of-Way, Grantee shall within sixty (60) days of the Effective Date of this agreement pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Upon thirty (30) day's written notice from the City, Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Franchise Fees Subject to Audit

Upon reasonable prior written notice and no more than once annually, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the five percent (5%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Right-of-Way for Grantee's use of the City's Right-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent

with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in any security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically

disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

Grantee shall, upon thirty (30) day's written notice from the City, provide a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.8 Performance Evaluations

(A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least

two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents maintained in the ordinary course of business as the City may reasonably require to perform the evaluation.

4.9 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys'

fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within thirty (30) ~~ten (10)~~ business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

5.2 Insurance

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars ($1,000,000.00) for bodily injury or death to any one person, and One Million Dollars ($1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars ($1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Subscriber Privacy

The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.3 Subscriber Bills

Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

SECTION 7. BOOKS AND RECORDS

7.1 Books and Records

Throughout the term of this Franchise Agreement, the Grantee agrees that the City may review the Grantee's books and records that are maintained in the ordinary course of business in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorney's fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(4) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

(A) Educational programming;

(B) New Mexico news, weather & information;

(C) Sports;

(D) General entertainment (including movies);

(E) Children/family-oriented;

(F) Arts, culture and performing arts;

(G) Foreign language;

(H) Science/documentary;

(I) National news, weather and information; and,

(J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored and they are in compliance with Grantee's terms of services, residential service agreement or other such provisions. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection,

"uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

9.1 Permits and General Obligations

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Right-of-Way and the rights and reasonable convenience of property owners who own property that adjoins any such Right-of-Way.

9.2 Conditions of Street Occupancy

New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the City (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds

are available to any other user of the Right-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall notify Grantee of such funding and make available such funds to the Grantee.

9.3 Relocation at request of Third Party

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

9.4 Restoration of Right-of-Way

If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Right-of-Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Right-of-Way existing immediately prior to the disturbance.

9.5 Safety Requirements

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

9.6 Trimming of Trees and Shrubbery

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming. The Grantee shall give reasonable advance notice to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing.

9.7 Aerial and Underground Construction

At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are

underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

9.8 Undergrounding and Beautification Projects

In the event all users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Right-of-Way.

SECTION 10. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

10.1 Subscriber Network

(A) The Cable System shall deliver no less than eighty five (85) Channels of video programming services to Subscribers.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(E) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

(F) Grantee shall not be required to obtain permits for construction work related to

the connection and disconnection of Subscribers between the distribution plant in the public rights of way and the Subscriber's residence to the extent such work disturbs no more than 20 feet of the public right of way.

10.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

10.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards.

10.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), and State technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

10.5 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and

(3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

(1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.,* before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

SECTION 11. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

11.1 Service Availability

(A) <u>In General</u>. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified

verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 11.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit in the form of an access and wiring agreement that is mutually satisfactory to the Grantee and the property owner. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Subscriber Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of thirty-five (35)~~forty-five (30)~~ residences per mile of Cable System plant and if the area is within 1,320 cable-bearing strand feet of Grantee's existing distribution plant. If the residential density is less than thirty-five (35) ~~forty-five (30)~~ residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35) ~~thirty (30)~~. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

11.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 125 feet from the distribution point on the Cable System from which cable service can be provided to these facilities. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.,* golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such Cable Service shall not be located in public waiting areas or used to entertain the public nor shall they be used in a way that might violate copyright laws. The outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld. Grantee is not required to provide free reception equipment for any complimentary account provided pursuant to this subsection. Grantee does not waive any rights under applicable law regarding complimentary service. Should Grantee elect to begin offsetting the value of complimentary service against franchise fees, Grantee shall first provide Franchise Authority with ninety (90) days prior written notice.

SECTION 12. FRANCHISE VIOLATIONS

12.1 Procedure for Remedying Franchise Violations

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule

and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Recommend the revocation of this Franchise pursuant to the procedures in subsection 12.2; or,

(2) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

12.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 12.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

12.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6)

months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 12.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at is own expense, any excavation that is made by it and shall leave all Right-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 12.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

12.4 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

12.5 Receivership and Foreclosure

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

12.6 No Monetary Recourse Against the City

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise

are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

12.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

12.8 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

12.9 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 12.8 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 13. FRANCHISE RENEWAL AND TRANSFER

13.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

13.2 Transfer of Ownership or Control

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

14. Severability

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

15.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this

Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

15.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC
8000 E. Iliff Ave.
Denver, CO 80231
Attn: Government Affairs Dept.

The City's address shall be:

City of Las Vegas
1700 N. Grand Ave.
Las Vegas, NM 87701
Attn: City Manager

15.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

15.4 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

15.5 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

15.6 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

15.7 Reasonableness of Consent or Approval

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

15.8 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Las Vegas, New Mexico this ___ day of _____, 2018.

ATTEST: CITY OF LAS VEGAS, NEW MEXICO:

City Clerk Mayor

APPROVED AS TO FORM: RECOMMENDED AND APPROVED:

City Attorney City Manager

Accepted and approved this _____ day of _____, 2018.

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC

_____

By: Richard C. Jennings
Its: Regional Senior Vice President, Cable Management

CITY OF LAS VEGAS

ORDINANCE NO. 18-08

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC. d/b/a/ COMCAST ("GRANTEE") TO OWN OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF LAS VEGAS, NEW MEXICO, SEETING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, AND PROVIDING FOR REGULATIONS AND USE OF SAID SYSTEM BY SAID CITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS, NEW MEXICO, AS FOLLOWS:

COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC
AND
CITY OF LAS VEGAS, NEW MEXICO

CABLE FRANCHISE AGREEMENT

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COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC
AND
CITY OF LAS VEGAS, NEW MEXICO

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.2 "Affiliate," when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.3 "Applicable Law" means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.4 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.5 "Basic Service" is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.6 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.7 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.8 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.9 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.10 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.11 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.12 "City" is the City of Las Vegas New Mexico, a body politic and corporate under the laws of the State of New Mexico.

1.13 "City Council" means the Las Vegas City Council, or its successor, the governing body of the City of Las Vegas, New Mexico.

1.14 "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

1.16 "Digital Starter Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.17 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.18 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be

considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.19 "Effective Date" means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.20 "FCC" means the Federal Communications Commission.

1.21 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.22 "Franchise" means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.23 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.24 "Franchise Fee" means that fee payable to the City described in subsection 3.1.

1.25 "Grantee" means Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC or its lawful successor, transferee or assignee.

1.26 "Gross Revenues" means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;

- fees paid to Grantee for channels designated for commercial/Leased Access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;

- Advertising Revenues as defined herein;

- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;

- revenues from program guides;

- Franchise Fees;

- FCC Regulatory Fees; and,

- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;

- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;

- launch fees and marketing co-op fees; and,

- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card

value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.26 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.26(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.27 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.28 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.29 "Manager" means the City Manager of the City or designee.

1.30 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.31 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.32 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.33 "Right-of-Way" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, right-of-way and similar public property and areas.

1.34 "State" means the State of New Mexico.

1.35 "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.36 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.38 "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.39 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.40 "Two-Way" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.41 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 1.19.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended

from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise. All ordinances or parts of ordinances or Municipal Code that are in conflict with or otherwise impose obligations different from the provisions of this Franchise are superseded by this Franchise. Notwithstanding any other provision of this Franchise, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the City that conflicts with its contractual rights under this Franchise, either now or in the future.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Right-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Right-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Right-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Right-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Right-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Right-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Right-of-Way, including the specific location of facilities in the Right-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Right-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Right-of-Way through joint trenching and other arrangements.

2.3 Term of Franchise

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act, or is extended by mutual agreement of the City and Grantee.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or

license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) Purposes. The Grantee and the City acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public Right-of-Way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Grantee and the City have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

(B) New Video Service Provider. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i) enters into any agreement with the City to provide video services to subscribers in the City, or (ii) otherwise begins to provide video services to subscribers in the City (with or without entering into an agreement with the City), the City, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the City under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the City.

(C) If there is no written agreement or other authorization between the new VSP and the City, the Grantee and the City shall use the sixty (60) day period to develop and enter into an

agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the City.

(D) Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to subscribers in the City, or that otherwise changes the nature or extent of the obligations that the City may request from or impose on a VSP providing video services to subscribers in the City, the City agrees that, notwithstanding any other provision of law, upon Grantee's written request the City shall: (i) permit the Grantee to provide video services to subscribers in the City on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the City. The City and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the City. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

(E) Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the City under Sections 2.6B, 2.6C or 2.6D shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the City, without penalty or damages.

(F) The term "Video Service Provider" or "VSP" shall mean any entity using the public Right-of-Way to provide multiple video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal

right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Right-of-Way, Grantee shall within sixty (60) days of the Effective Date of this agreement pay as a Franchise Fee to the City, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Upon thirty (30) day's written notice from the City, Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Franchise Fees Subject to Audit

Upon reasonable prior written notice and no more than once annually, during normal business hours at Grantee's principal business office, the City shall have the right to inspect the

Grantee's financial records used to calculate the City's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the five percent (5%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Right-of-Way for Grantee's use of the City's Right-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are

they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in any security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

Grantee shall, upon thirty (30) day's written notice from the City, provide a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.8 Performance Evaluations

(A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents maintained in the ordinary course of business as the City may reasonably require to perform the evaluation.

4.9 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and

severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within thirty (30) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

5.2 Insurance

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars ($1,000,000.00) for bodily injury or death to any one person, and One Million Dollars ($1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars ($1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Subscriber Privacy

The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.3 Subscriber Bills

Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

SECTION 7. BOOKS AND RECORDS

7.1 Books and Records

Throughout the term of this Franchise Agreement, the Grantee agrees that the City may review the Grantee's books and records that are maintained in the ordinary course of business in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorney's fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(4) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

(A) Educational programming;

(B) New Mexico news, weather & information;

(C) Sports;

(D) General entertainment (including movies);

(E) Children/family-oriented;

(F) Arts, culture and performing arts;

(G) Foreign language;

(H) Science/documentary;

(I) National news, weather and information; and,

(J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device

offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored and they are in compliance with Grantee's terms of services, residential service agreement or other such provisions. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

9.1 Permits and General Obligations

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Right-of-Way and the rights and reasonable convenience of property owners who own property that adjoins any such Right-of-Way.

9.2 Conditions of Street Occupancy

New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the City (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Right-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall notify Grantee of such funding and make available such funds to the Grantee.

9.3 Relocation at request of Third Party

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

9.4 Restoration of Right-of-Way

If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Right-of-Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Right-of-Way existing immediately prior to the disturbance.

9.5 Safety Requirements

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

9.6 Trimming of Trees and Shrubbery

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming. The Grantee shall give reasonable advance notice to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing.

9.7 Aerial and Underground Construction

At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

9.8 Undergrounding and Beautification Projects

In the event all users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Right-of-Way.

SECTION 10. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

10.1 Subscriber Network

(A) The Cable System shall deliver no less than eighty five (85) Channels of video programming services to Subscribers.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks are retransmitted in those same formats.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(E) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community

within the Franchise Area.

(F) Grantee shall not be required to obtain permits for construction work related to the connection and disconnection of Subscribers between the distribution plant in the public rights of way and the Subscriber's residence to the extent such work disturbs no more than 20 feet of the public right of way.

10.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

10.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards.

10.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), and State technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

10.5 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and

(3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

(1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance

with generally accepted industry guidelines;

(3) Tests in response to Subscriber complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.,* before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

SECTION 11. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

11.1 Service Availability

(A) <u>In General</u>. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 11.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit in the form of an access and wiring agreement that is mutually satisfactory to the Grantee and the property owner. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Subscriber Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of thirty-five (35)residences per mile of Cable System plant and if the area is within 1,320 cable-bearing strand feet of Grantee's existing distribution plant. If the residential density is less than thirty-five (35) - residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

11.2 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 125 feet from the distribution point on the Cable System from which cable service can be provided to these facilities. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.,* golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such Cable Service shall not be located in public waiting areas or used to entertain the public nor shall they be used in a way that might violate copyright laws. The outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld. Grantee is not required to provide free reception equipment for any complimentary account provided pursuant to this subsection. Grantee does not waive any rights under applicable law regarding complimentary service. Should Grantee elect to begin offsetting the value of complimentary service against franchise fees, Grantee shall first provide Franchise Authority with ninety (90) days prior written notice.

SECTION 12. FRANCHISE VIOLATIONS

12.1 Procedure for Remedying Franchise Violations

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Recommend the revocation of this Franchise pursuant to the procedures in subsection 12.2; or,

(2) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

12.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 12.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

12.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 12.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at is own expense, any excavation that is made by it and shall leave all Right-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 12.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

12.4 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

12.5 Receivership and Foreclosure

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

12.6 No Monetary Recourse Against the City

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

12.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

12.8 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

12.9 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 12.8 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 13. FRANCHISE RENEWAL AND TRANSFER

13.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

13.2 Transfer of Ownership or Control

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise

without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

14. Severability

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

15.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

15.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC
8000 E. Iliff Ave.

Denver, CO 80231
Attn: Government Affairs Dept.

The City's address shall be:

City of Las Vegas
1700 N. Grand Ave.
Las Vegas, NM 87701
Attn: City Manager

15.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

15.4 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

15.5 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

15.6 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

15.7 Reasonableness of Consent or Approval

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

15.8 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Las Vegas, New Mexico this ___ day of _____, 2018.

ATTEST:

_____
City Clerk

CITY OF LAS VEGAS, NEW MEXICO:

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

RECOMMENDED AND APPROVED:

_____
City Manager

Accepted and approved this _____ day of _____, 2018.

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC

_____

By: Richard C. Jennings
Its: Regional Senior Vice President, Cable Management

Regular or Special
CITY COUNCIL MEETING AGENDA REQUEST

DATE: 11/7/18 **DEPT: Transportation/HR** **MEETING DATE**: 11/20/18

ITEM/TOPIC: Update to the City of Las Vegas Meadow City Express-Zero Tolerance Substance Abuse Policy

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution No. 18-46 Adopting the updated City of Las Vegas Meadow City Express-Zero Tolerance Substance Abuse Policy.

BACKGROUND/RATIONALE: Meadow City Express is updating their current policy to reflect updated regulations required by the Federal Transit Administration (FTA) of the US Department of Transportation.

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULÉ-GIRÓN
MAYOR

TANA VEGA
INTERIM FINANCE DIRECTOR (PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

ESTHER GARDUNO MONTOYA, CITY ATTORNEY (ALL CONTRACTS, ORDINANCES AND RESOLUTIONS MUST BE REVIEWED)

Revised 9/18

CITY OF LAS VEGAS
RESOLUTION NO._____

A RESOLUTION REPEALING AND REPLACING ALL PREVIOUS RESOLUTIONS AND ADOPTING AN UPDATED CITY OF LAS VEGAS TRANSPORTATION DEPARTMENT (MEADOW CITY EXPRESS) FTA DRUG AND ALCOHOL TESTING POLICY (ZERO TOLERANCE)

WHEREAS, the City of Las Vegas Transportation Department (Meadow City Express) is required by the NMDOT Transit and Rail Division to have a FTA Drug and Alcohol Testing Policy in place; and

WHEREAS, upon completion of the Meadow City Express Drug and Alcohol Site Visit it was recommended that this updated FTA Drug and Alcohol Zero Tolerance Policy be created and adopted by the Governing Body, and distributed to MCE employees; and

NOW, THEREFORE BE IT RESOLVED THAT the Governing Body of the City of Las Vegas hereby approved the City of Las Vegas Transportation Department (Meadow City Express) FTA Drug and Alcohol Testing Policy (Zero Tolerance) and directs its distribution to transit employees.

PASSED, APPROVED AND ADOPTED by the City of Las Vegas Governing Body this _____day of

_____, 2018.

City of Las Vegas:

_____
Tonita Gurule-Giron, Mayor

Approved as to legal sufficiency only:

_____
Esther Garduno-Montoya, City Attorney

Attest:

_____
Casandra Fresquez, City Clerk

DRUG AND ALCOHOL POLICY ADDENDUM
EFFECTIVE: JANUARY 1, 2018

The United States Department of Transportation (USDOT) – Office of Drug and Alcohol Policy Compliance (ODAPC) has issued an update to USDOT's drug and alcohol testing regulation (49 CFR Part 40). The new regulation has been revised and the changes (summarized below) will become effective on January 1, 2018. Therefore, the City of Las Vegas Meadow City Express drug and alcohol testing policy is amended as follows:

1. CHANGES TO THE DRUG TESTING PANEL
    a. Four new opioids added to the drug testing panel –
        i. The USDOT drug testing remains a "5-panel" drug test; however, the list of opioids for which are tested will expand from three to seven opioids.
        ii. The "opioid" category will continue to test for codeine, morphine, and heroin; however, the "opioid" testing panel will now be expanded to include four (4) new semi-synthetic opioids:
            1. (1) Hydrocodone, (2) Hydromorphone, (3) Oxycodone, and (4) Oxymorphone.
            2. Common brand names for these semi-synthetic opioids include, but may be limited to: OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.
    b. 'MDA' will be tested as an initial test analyte
    c. 'MDEA' will no longer be tested for under the "amphetamines" category.
2. BLIND SPECIMEN TESTING
    a. The USDOT no longer requires blind specimens to be submitted to laboratories.
3. ADDITIONS TO THE LIST OF "FATAL FLAWS"
    a. The following three circumstances have been added to the list of "fatal flaws":
        i. No CCF received by the laboratory with the urine specimen.
        ii. In cases where a specimen has been collected, there was no specimen submitted with the CCF to the laboratory.
        iii. Two separate collections are performed using one CCF.
4. MRO VERIFICATION OF PRESCRIPTIONS
    a. When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait five (5) business days to be contacted by the employer's prescribing physician before notifying the employer of a medical qualification issue or significant safety risk.

i. Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO. The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

5. DEFINITIONS

a. The term **"DOT, the Department, DOT Agency"**

i. Modified to encompass all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency.

b. The term **"Opiate"** is replaced with the term **"Opioid"** in all points of reference.

c. The definition of **"Alcohol Screening Device (ASD)"** is modified to include reference to the list of approved devices as listed on ODAPC's website.

d. The definition of **"Evidential Breath Testing Device (EBT)"** is modified to include reference to the list of approved devices as listed on ODAPC's website.

e. The definition of **"Substance Abuse Professional (SAP)"** will be modified to include reference to ODAPC's website. The fully revised definition includes:

i. A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at https://www.transportation.gov/odapc/sap) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

NOTE: The revisions listed in this addendum include only those revisions to 49 CFR Part 40 which may be referenced in our drug & alcohol testing policy. A list of all the revisions made to 49 CFR Part 40 can be found at https://www.transportation.gov/odapc.

Addendum Authorization Date: _____

Authorized Official (Printed Name): _____

Signature: _____

I. Introduction

Meadow City Express is dedicated to providing friendly, safe, dependable and economical transportation services to our transit system passengers. Meadow City Express is concerned about the effects of the use of illegal drugs, controlled substances and abuse of alcohol upon the health and safety of its employees and passengers. To address these concerns, it is our policy (1) to ensure that employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner; (2) to create a workplace environment free from the adverse effects of drug abuse and alcohol misuse; (3) to prohibit the unlawful manufacture, distribution, dispensing, possession or use of controlled substances; and (4) to encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform assigned duties.

II. Purpose

The purpose of this policy is to assure worker's fitness for duty and to protect employees, passengers, and the public from the risks posed by the misuse of alcohol and use of prohibited drugs. This policy is intended to comply with all applicable Federal Regulations governing workplace anti-drug programs in the transit industry. **The Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT) has enacted 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for the safety-sensitive positions and prevents performance of safety-sensitive functions when there is a positive test result or a refusal to test. The U.S. DOT has enacted CFR 49, as amended, that sets standards for the collection, testing and reporting of urine and breath specimens. Part 40 also mandates specific protocols used by the Medical Review Officer (MRO), Substance Abuse Professional (SAP), Collector, Breath Alcohol Technician (BAT) and Third Party Administrator/Consortium (TPA)**. The sections of this policy that reflect Parts 655 and 40 will be indicated by the use of **Bold Typeface**. In addition, the Federal Government has enacted 49 CFR Part 29, "The Drug-Free Workplace Act" policies and the reporting of certain drug-related offenses to the FTA. These sections will appear in the policy in *Italic Typeface*. This policy also incorporates Meadow City Express requirements under the authority of the Meadow City Express' policy on the use of alcohol and drugs in the workplace. Anything appearing in the policy in regular typeface will be under the Meadow City Express' own authority. This policy will be kept current with all the latest federal regulations and interpretations as mandated.

III. Applicability

This policy applies to all transit system employees; paid part-time employees; contract employees and contractors when performing any transit-related safety-sensitive duties or when they are on transit property. **This policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work.**

A safety-sensitive function is defined as any duty related to the safe operation of public transit services including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), control or dispatch of a revenue service vehicle or equipment used in revenue service, maintenance of revenue vehicle or equipment used in revenue service (maintenance functions include the repair, overhaul and rebuild of engines, vehicles and/or equipment used in revenue service), security personnel who carry firearms, and any other employee or volunteer who perform duties requiring a CDL and/or performs a safety-sensitive function and receives remuneration in excess of their actual expenses. Supervisors performing (or who may perform) any of the above described functions are considered to be safety-sensitive employees.

The United States Department of Transportation (USDOT) – Office of Drug and Alcohol Policy Compliance (ODAPC) has issued an update to USDOT's drug and alcohol testing regulation (49 CFR Part 40). The new regulation has been revised and the changes (summarized below) will become effective on January 1, 2018. Therefore, the City of Las Vegas Meadow City Express drug and alcohol testing policy is amended as follows:

DEFINITIONS

a. **The term "DOT, the Department, DOT Agency"**
   i. **Modified to encompass all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency.**
b. **The term "Opiate" is replaced with the term "Opioid" in all points of reference.**
c. **The definition of "Alcohol Screening Device (ASD)" is modified to include reference to the list of approved devices as listed on ODAPC's website.**
d. **The definition of "Evidential Breath Testing Device (EBT)" is modified to include reference to the list of approved devices as listed on ODAPC's website.**
e. **The definition of "Substance Abuse Professional (SAP)" will be modified to include reference to ODAPC's website. The fully revised definition includes:**
   i. **A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at https://www.transportation.gov/odapc/sap) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.**

Participation in the Substance Abuse Program as stated in this policy is a condition of employment. Meadow City Express has a "Zero Tolerance Policy" which means that **any safety-sensitive employee who violates this policy by having confirmed a positive drug or alcohol test result or refuses to be tested when required, shall be immediately removed from the safety-sensitive duty, referred to a Substance abuse Professional (SAP)** and will be terminated.

All positions were reviewed for safety-sensitive duties to determine the safety-sensitive positions. Additionally, any new positions created in the future will be reviewed for safety-sensitive duties. A full listing of such employee positions is located on Attachment B of this policy.

The FTA anti-drug rule preempts any state or local law, rule, regulation, or order to the extent that (a) compliance with both the state or local requirement and any requirement in this part is not possible, or (b) compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

IV. Prohibited Substances

Prohibited substances addressed by this policy include the following:

A. Illegally Used Controlled Substance or Drugs

Any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), MDMA (ecstasy) and cocaine, as well as any drugs not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse or legally prescribed drugs, and use of illegally obtained prescription drugs. **Safety sensitive employees will be tested for marijuana, cocaine, amphetamines, opiates and phencyclidine (PCP).** Use of any products that may result in a positive drug test (hemp oil for example) is prohibited by the Federal Guidelines.

B. Alcohol

The use of beverages containing alcohol or other product containing alcohol including, medication, mouthwash, food, candy, or any other substance, which causes alcohol to be present in the body at a rate of 0.04% alcohol concentration or greater, while performing safety-sensitive duties or while on-call to perform a safety-sensitive duty, is prohibited.

V. Prohibited Conduct

A. Manufacture, trafficking, Ingestion, and Use.

Any employee engaging in the manufacture, distribution, dispensing, possession or use of prohibited substances on the Meadow City Express' premises, in public transit vehicles, in uniform or while on business related to public transportation system operated under a contract with Meadow City Express will be subject to disciplinary action up to and including termination. Ingestion of stated drugs is prohibited at all times. Law Enforcement shall be notified, as appropriate where criminal activity is suspected.

Notification of Criminal Drug Conviction

All employees are required to notify Meadow City Express of any criminal drug statute conviction for a violation occurring in the workplace within five (5) days after such conviction. Failure to comply with this provision shall result in disciplinary action up to and including termination. Any safety sensitive employee must also report any circumstances where there was a criminal conviction or loss of driving privileges due to drug or alcohol misuse within five (5) days of such conviction or loss of privileges.

B. Intoxication/Under the Influence

Any safety-sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty shall be suspended from job duties pending an investigation and verification of condition. **Employees found to be under the influence of prohibited substances or who fail to pass a drug or alcohol test shall be removed from duty. In addition to being removed from duty, such employees will receive** educational and rehabilitative information and

a referral to a Substance Abuse Professional (SAP) and terminated from his/her position consistent with Meadow City Express' Zero Tolerance Policy.

A drug or alcohol test is considered positive of the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

C. Alcohol Use and Prohibition

No safety-sensitive employee should report for duty or remain on duty when his/her ability to perform assigned functions is adversely affected by alcohol or when his/her alcohol concentration is 0.04 or greater. Part 655 permits alcohol testing just before, during and just following the performance of a safety-sensitive duty, Meadow City Express under its own authority also prohibits the consumption of alcohol all times the employee is on duty or on transit property. **No safety-sensitive employee shall use alcohol while performing safety-sensitive functions, or four (4) hours before, just after performing a safety-sensitive function or while on call. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty.** The covered employee will subsequently be relieved of his/her on-call responsibilities. **No safety-sensitive employee shall use alcohol for eight (8) hours following involvement of an accident or until the employee has undergone a required post-accident alcohol test, whichever is first.**

If Meadow City Express has actual knowledge of the use of alcohol while the employee is performing safety-sensitive functions, the employee will not be permitted to continue to perform the safety-sensitive duty.

D. Compliance with Testing Requirements

All safety-sensitive employees will be subject to a urine drug test and breath alcohol testing, a condition of their employment. Refusal of a drug and/or alcohol test will be treated as a verified positive test result. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty immediately, informed of educational and rehabilitation programs available and referred to a SAP.

Refusals:

Refusals can include a variety of behaviors, including:

- **Failure to appear in a timely fashion (except for pre-employment test)**
- **Failure to remain until the testing process is complete. An applicant who leaves the testing site before the process commences for a pre-employment test has not refused to test.**
- **Failure to attempt to provide a breath or urine specimen.**
- **Failure to provide a sufficient quantity of urine or breath without a valid medical explanation.**
- **Failure to undergo a medical evaluation as required by the MRO or DER.**
- **Failure to cooperate with any part of the testing process for drug and alcohol testing.**
- **Failure to permit monitoring or observation.**

- **Failure to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.**
- **Possess or wearing a prosthetic or other device used to tamper with the testing process.**
- **Failure to take a second test as directed by the collector or employer.**
- **Admitting the adulterated or substituted of a specimen to the collector or MRO.**
- **The MRO's verification of a test as adulterated or substituted.**
- **Refusal to sign the certification at Step 2 of the Alcohol Testing Form (ATF).**

A refusal to test will be treated the same as a positive test result.

Observed Collections:

The observation will be done by a person of the same gender in the following circumstances:

- **All return to duty tests.**
- **All follow up tests.**
- **Any time the specimen collected is out of temperature range (90°F-100°F).**
- **Any time the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.**
- **Any time a collector observes materials brought to the collection site or employee's conduct clearly indicates an attempt to tamper with a specimen.**
- **Any time the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid without a valid medical reason.**
- **Any time the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted but had to be canceled due to the test of the split specimen could not be performed.**

E. Consequences of a Positive Drug and/or Alcohol Test or Refusal to Test

Drug tests can be performed any time a safety-sensitive employee is on duty. An alcohol test can be performed any time the covered employee is performing a safety-sensitive duty or just before, or just after the performance of a safety-sensitive duty. Under the authority of Meadow City Express the use of or influence of alcohol on a covered employee any time that employee is on duty is prohibited.

A violation of this policy in the form of a verified positive drug result, a confirmed alcohol result of 0.04 BAC or greater, or a refusal to test will result in the immediate removal of the covered employee from safety-sensitive duties, referral to a SAP and under Meadow City Express' authority, termination of employment.

VI. Testing for Prohibited Substances

Analytical urine drug testing and breath testing (saliva testing optional for screening) for alcohol may be conducted when circumstances warrant and as required by Federal regulations. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability, using techniques, equipment, and laboratory facilities which have been approved

by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted in accordance to the procedures in 49 CFR Part 40, as amended. This will ensure the test results are attributed to the correct employee by following procedures including, picture identification of the employee, the use of the Federal Drug Custody and Control Form with unique specimen identification number completed by a trained collection site person who insures that the Custody and Control Form is completed correctly and signed and certified by the donor, collection of Spit Sample specimens that are sealed and initialed by the donor.

Drugs:
An employee may be tested for the following prohibited substances anytime while on duty. The drugs that will be tested for includes cocaine, opioids, amphetamines, and phencyclidine (PCP). An initial drug screen, called an immunoassay test, will be conducted on each urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the metabolites present are above the minimum thresholds established in 49 CFR Part 40, as amended.

The United States Department of Transportation (USDOT) – Office of Drug and Alcohol Policy Compliance (ODAPC) has issued an update to USDOT's drug and alcohol testing regulation (49 CFR Part 40). The new regulation has been revised and the changes (summarized below) will become effective on January 1, 2018. Therefore, the City of Las Vegas Meadow City Express drug and alcohol testing policy is amended as follows:

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    a. Four new opioids added to the drug testing panel –
        i. The USDOT drug testing remains a "5-panel" drug test; however, the list of opioids for which are tested will expand from three to seven opioids.
        ii. The "opioid" category will continue to test for codeine, morphine, and heroin; however, the "opioid" testing panel will now be expanded to include four (4) new semi-synthetic opioids:
            1. (1) Hydrocodone, (2) Hydromorphone, (3) Oxycodone, and (4) Oxymorphone.
            2. Common brand names for these semi-synthetic opioids include, but may be limited to: OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.
    b. 'MDA' will be tested as an initial test analyte
    c. 'MDEA' will no longer be tested for under the "amphetamines"

2. BLIND SPECIMEN TESTING
    a. The USDOT no longer requires blind specimens to be submitted to laboratories.

Alcohol:

Tests confirming alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved Evidential Breath Test (EBT) device operated by a trained Breath Alcohol Technician (BAT). If the initial test indicated an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. A safety-sensitive employee who has a confirmed alcohol concentration of 0.02 or greater but less than 0.04 will result in immediate removal from his/her position until the start of the employee's next regularly scheduled duty period, but not less than eight hours unless a retest results in a concentration measure of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of the requirements set forth in 49 CFR Part 655 of this policy.

MRO:
All test results from the laboratory will be reported to a Medical Review Officer (MRO). An MRO is a licensed physician who is certified as an MRO, with detailed knowledge of a substance abuse disorders and drug testing and meets the standards defined in 49 CFR part 40, as amended. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate alternative medical explanation for a confirmed positive result. The MRO will contact the employee, notify the employee of the positive laboratory result, and provide the employee with an opportunity to explain the confirmed test result. The MRO will subsequently review the employee's medical history/medical records to determine whether there is a legitimate medical explanation for a positive laboratory result. If no legitimate medical explanation is found, the test will be verifies positive and reported to the Designated Employer Representative. If a legitimate explanation is found, the MRO will report the test result as negative. The MRO may also cancel results that are troubled according to the protocol set forth in 49 CFR part 40, as amended. The MRO will also inform the employee whose result is positive from the laboratory of his/her rights to have the spit sample analyzed at a second SAMHSA laboratory. See part E-Employee Requested Testing.

All employees/applicants with a dilute negative test result will be required to retest. The second test result will stand as the test of record and no additional testing will be required unless directed to do so by the MRO. A dilute positive result is treated the same as any other positive drug test result.

MRO VERIFICATION OF PRESCRIPTIONS

a. **When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait five (5) business days to be contacted by the employer's prescribing physician before notifying the employer of a medical qualification issue or significant safety risk.**
    i. **Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO**

has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO. The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

Testing Procedures:
A copy of 49 CFR Part 40 as amended, is available for review for complete and detailed laboratory, collection, MRO, and SAP procedures. An employee who would like to review 49 CFR parts 40 and 655 may request a copy from the Designated Employer Representative (DER)

VII. Testing Events:

A. Pre-Employment/Reclassification Testing

All safety-sensitive applicants shall undergo urine drug testing prior to performing safety sensitive duties. This requirement also affects employees not in safety-sensitive positions who seek reclassification into a safety-sensitive position. Receipt by Meadow City Express of a negative drug test result is required prior to performing safety sensitive duties in a covered position. A cancelled test result is not acceptable and must be retaken. Hiring into a safety-sensitive position will be completed within one (1) month of a successful pre-employment/reclassification test. If the applicant has a positive pre-employment drug test, he/she cannot be hired for a safety sensitive position.

If a current covered employee has not performed a safety sensitive duty for 90 days or longer, and has been removed from the random pool, the employee must submit to a new pre-employment drug test and receive a negative result before resuming safety-sensitive duties.

If otherwise qualified, an individual with permanent or long term disabilities that directly render them unable to provide an adequate urine specimen will be able to perform safety-sensitive duties despite their inability to provide urine during a pre-employment test. The

MRO will determine long term inability to provide urine by medical examination and consultation with the employee's physician.

All applicants for safety-sensitive positions will be notified in writing that they will be required to undergo pre-employment/reclassification drug testing prior to their employment or performance of any safety sensitive duties and that they will be subject to drug and alcohol testing throughout the period of their employment and Meadow City Express will retain on file the drug test results of all new hires.

When a covered employee or applicant has previously failed or refused a DOT pre-employment drug test (or any other DOT drug or alcohol test, or refused to be tested in the prior 2 years), the employee or applicant must present to the employer proof of successfully having completed a referral, evaluation and treatment plan as described in Sec. 655.62.

B. Reasonable Suspicion Testing

All safety sensitive employees may be subject to a fitness for duty evaluation, to include appropriate urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance.

A reasonable suspicion referral for testing, as specified by 49 CFR Part 655, will be made on the basis of documented objective facts and circumstances which are consistent with the long or short-term effects of substance abuse. Reasonable suspicion testing can be done if the observation is made for suspicion of drug use at anytime the employee is on duty however, alcohol testing must be done during, just preceding, or immediately following the performance of a safety sensitive function. Observations leading to that testing must be made during, just preceding or just after the employee performs covered duties.

Reasonable suspicion determinations will be made by one (or more) supervisor(s) in function rather than by title, who has been trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or misuse. Criteria for reasonable suspicion testing included specific, contemporaneous, and articulable observations concerning appearance, behavior, speech, or body odors of the covered employee consistent with possible drug or alcohol misuse. Written documentation shall be required for any reasonable suspicion testing. Only trained supervisors who directly observe said reasonable suspicious behavior have justification for requiring reasonable suspicion testing. When a determination has been made for reasonable suspicion testing, the employee will be transported immediately by the supervisor to the collection site. Alcohol tests delayed more than two hours must be accompanied with documentation specifying the reason for

such a delay. If the alcohol test is not done within 8 hours the reasons for not testing must also be updated on the written report.

C. Post-Accident Testing

Safety-sensitive employee will be required to undergo urine drug and breath alcohol testing if they are involved in an accident with a public transportation system vehicle (regardless of whether or not the vehicle is in revenue service) that results in a fatality. Post-accident testing is mandatory for any accidents where there is loss of life. This includes all safety-sensitive employees that are on-duty in the vehicles and any other whose performance could have contributed to the accident, such as surviving operators, dispatchers, maintenance personnel, or other safety sensitive associated employees. Neither a deceased nor an unconscious employee can be tested. Any post-accident testing is stayed while the employee assists in resolution of the accident or receives medical attention following the accident.

In addition, a post-accident test will be conducted in situations where there isn't a fatality but the following occurs, (a) an individual requires immediate transportation to a medical treatment facility (as a result of collision or non-collision), (b) anytime one or more vehicles incurs disabling damage that prevents any of the vehicles involved from leaving the scene of the occurrence in their usual manner in daylight after simple repairs, or (c) with respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus or vessel and the public transit vehicle is removed from operation. In a non-fatal accident as previously described, post-accident testing will be conducted unless the operator's performance (and any other covered employees whose performance could have contributed to the accident) can be completely discounted as a contributing factor to the accident as determined by employer using the best information at the time of the decision.

Following an accident, the safety-sensitive employee will be tested as soon as possible, but not to exceed (8) eight hours for alcohol testing and 32 hours for drug testing. All accidents will have documentation as to whether or not a test was administered and the rational for such a decision. If there is a delay of greater than 2 (two) hours for an alcohol test, a reason must be given in writing, retained in a file for possible later referral, and the employer must still attempt to administer the alcohol test, however, all attempts must cease after eight hours. If alcohol testing is not done within 8 hours following the accident the reasons for not testing must also be updated on the written report. Any safety-sensitive employees subject to post-accident testing must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accidental alcohol test.
Safety-sensitive employees subject to post-accident testing must remain readily available for testing and the employer must know the whereabouts of those employees at all times until post-accident testing has been completed or until the employee has been completely discounted as a contributing factor.

Written rational and documentation is required when a decision is made not to test an employee in a FTA nonfatal accident. In the rare event that the employee cannot participate in the FTA collection process, following an accident, the employer may accept the results of a test performed by federal, state, or local officials if results are released.

Procedures will be in place to insure testing can be conducted all hours of operation.

Any safety-sensitive employee who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test. In such cases, the employee will be subject to the consequences of a test refusal.

Post accident testing will be stayed while the employee(s) in question assist in the resolution of the accident or receive medical treatment following the accident.

D. Random Testing

FTA regulations require random testing of drugs and alcohol for all safety-sensitive employees. Random testing serves as a deterrent against employee beginning or continuing drug use or alcohol misuse. All employees in safety-sensitive positions will be subjected to random, unannounced testing. The selection of safety-sensitive employees for random drug and/or alcohol testing will he made using a scientifically valid method that ensures each covered employee will have an equal chance of being selected each time selections are made and there will be no discretion of the managers as to the selections made. All safety-sensitive employees remain in the selection pool even after being selected for testing thus, employees may be selected more than once a year. The tests are conducted throughout the year in an unpredictable pattern. The random number selection proves is conducted in strict confidence to ensure no employee is forewarned and that testing is unannounced. A limited number of individuals will have knowledge of the random selections to insure confidentiality and the integrity of the testing process.

The random testing period begins in January. The random tests will be spread throughout the draw period and all shifts that safety-sensitive duties are performed. Random Alcohol testing can only be performed just before, during, or just after the performance of a safety-sensitive job function, while drug test can be conducted at any time during the employee's shift (i.e. beginning, middle, and end). Employees are required to proceed immediately to the collection site upon notification of their random selection.

Only U.S. DOT safety-sensitive employees are included in the random pool. In the event the Designated Employer Representative (DER) is selected for random testing, a secondary contact

will notify the DER to report to the collection site for the random testing. All safety-sensitive employees shall be notified discreetly to immediately report to the collection site.

Meadow City Express retains records of the date and time of notification that a safety-sensitive employee has been selected and the results of those tests. All information is confidential.

As a member of the New Mexico Department of Transportation Consortium, Meadow City Express shall, during the course of a year, participate in the random testing program insuring the minimum rate defined by Federal Transit Administration of safety sensitive employees are tested for drugs and alcohol use. The rates are subject to annual revision based on the FTA regulations. The testing rate performed by the Consortium will always meet the minimum rate set by 49 CFR part 655. These percentages are subject to change as a result of an annual statistical review by the FTA.

Employee Requested Testing

Any safety-sensitive employee who has been notified by the MRO that h/she has a verified positive drug test and/or refusal to test because of adulteration or substitution may request the MRO to forward the spit sample to a different DHHS certified laboratory for analysis. The test must be conducted on the spit sample that was provided by the employee at the same time as the original sample. Payment for testing of the spit specimen is the responsibility of the employee, unless the result of the spit sample test invalidates the result of the original test. Testing will not be denied if the employee cannot pay. Meadow City Express will ensure that the costs for the spit specimen are covered in order to complete a timely analysis, however, Meadow City Express will seek reimbursement for the spit analysis from the employee. **The final spit specimen result goes to the employer.**

The method of collecting, storing, and testing the spit sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for split sample testing must be made to the Medical
Review Officer within 72 hours of notice of the original sample verified test result. The MRO must direct the laboratory in writing to send the spit sample with appropriate copies of the chain of custody form and a copy of the MRO's request for testing to another DHHS certified laboratory.

Requests after 72 hours will only be accepted if the delay was due to documented facts that were beyond the control of the employee.

VIII. Consequences of a Positive Test Result or a Refusal.

Any safety-sensitive employee or applicant who tests positive for the presence of illegal drugs and/or alcohol above the minimum thresholds set forth in 49 CFR Part 40, as amended, or has refused to submit to a drug or alcohol test (except in the case of an applicant) will be immediately removed from safety sensitive duties and referred to a substance Abuse Professional (SAP). An SAP shall be a licensed or certified psychologist, social worker, or employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse(ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.. The SAP will adhere to the procedure and requirements defined in 49 CFR part 40, subpart O.

Meadow City Express is not responsible for any costs incurred for the SAP's evaluation, assessment or any treatment recommendation.

VIX. Voluntary Treatment Requirements (prior to any violation of this policy)

Voluntary requests for treatment must be made prior to any pending drug/alcohol test or disciplinary action. Employees will not be disciplined for requesting treatment, but will be expected to observe job performance standards and work rules as they apply to every employee.

All employees are encouraged to make use of the available resources for treatment for alcohol misuse and illegal drug use problems. Under certain circumstances, employees may be required to undergo treatment for substance abuse or alcohol misuse. Any employee who refuses or fails to comply with transit system requirements for treatment after care, or return to duty shall be subject to disciplinary action, up to and including termination. The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

X. Information Disclosure

Meadow City Express will strictly adhere to all standards of confidentiality and assure all employees that testing records and results will be released only to those authorized by FTA rules to receive such information. All drug and alcohol testing records will be maintained in a secure manner so that disclosure of information to unauthorized persons does not occur. Privacy of each tested employee shall be strictly maintained. Information will only be released in the following circumstances:

1. **To a third party only as directed by specific, written instruction of the employee;**
2. **To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;**
3. **To a subsequent employer upon receipt of a written request from the employee;**
4. **To the national Transportation Safety Board during an accident investigation.**
5. **To the DOT or any DOT agency with regulatory authority over the employer or any of its employees, or to a State oversight agency authorized to oversee rail fixed-guideway system; or**
6. **To the employee, upon written request.**

Employee have the unqualified right to review their drug and alcohol testing records, to have access to information to dispute the results of any testing outcome, to have access to any pertinent records such as equipment calibration records and records of laboratory certification.

XI. Employee and Supervisor Training

All safety sensitive employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training must also include manifestations and behavioral cues that may indicate prohibited drug use. The training will be in the context of prohibited drug use in the workplace, the FTA regulations, and Meadow City Express's substance abuse policy. Additional training shall also include information concerning the effects of alcohol misuse on the individual's health, work, and personal life, and signs and symptoms of an alcohol problem. Printed literature concerning prohibited drug use and the effects of drugs and alcohol as well as a service hotline for employees experiencing problems with prohibited drugs and alcohol will be made readily available to all safety-sensitive employees.

Supervisors will also receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Training shall be given to all supervisors concerning: (a) their role and responsibility of reasonable suspicion determinations, (b) procedures for initiating, sustaining, and documenting the referral of reasonable suspicions, (c) instructions for employee intervention , and (d) procedures for record keeping/documenting a reasonable suspicion event. Supervisors will not perform supervisory duties that required reasonable suspicion determination prior to completing supervisor training. Training for non-safety-sensitive employee on the importance of maintaining a drug-free workplace .shall also be provided.

Handouts are available providing information concerning the effects of drug use and alcohol misuse on the individual's health, work, and personal life and the signs and symptoms of alcohol misuse.

XII. Employee/Employer Communications

The City of Las Vegas Transportation (Meadow City Express) Substance Abuse Policy was originally approved and adopted by Mayor and City Council on 12/21/2011 and became effective 12/21/2011.
Anytime this policy is substantively amended or updated due to changes in Federal regulations in the future, the policy will contain the date of adoption of the amended policy by Mayor and City Council and the date the amended policy became effective.

This policy and current and future contracts will be modified to stay within required compliance with FTA regulations.

Copies of this policy will be provided to all safety-sensitive employees. A Confirmation o f Receipt shall be signed acknowledging that the employee has receive the policy and understands that it is the employee's responsibility to abide by the provisions of the policy. Revisions to this policy shall be made aware of to the employee and shall be acknowledged with an updated Confirmation of Receipt. All new hires shall receive the most current policy.

VII. Proper Application of the Policy

Supervisors/manager are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

Attachment A
System Contacts

Any questions regarding this policy or any other aspect of the drug free and alcohol-free transit program should contact the following transit system representative.

Drug and Alcohol Program Manager:

Name: Casandra Fresquez
Title: City Clerk/Human Resource Director
Address: 1700 North Grand Avenue
Las Vegas, New Mexico 87701
Telephone Number: (505) 454-1401

Designated Employer Representative:

Name: Darlene Arguello
Title: HR Personnel Officer/Risk Management
Address: 1700 North Grand Avenue
Las Vegas, New Mexico 87701
Telephone Number: (505)454-1401

SAMHSA Certified Laboratory :

Name: SED Laboratories
Address: 5601 Office Boulevard, NE
Albuquerque, NM 87109
Telephone Number: (800)999-5227

Medical Review Officer:

Name: Stephen L. Kracht, D.O.
Address: 8140 Ward Pkwy Suite 275
Kansas City, MO 64114
Telephone Number: (855) 355-7058
Fax: (913) 498-5038

All provisions set forth in bold face print are included consistent with requirements specifically set forth in 49 CFR Part 655, or Part 40, as amended. Provisions set forth in the Drug Free Workplace Act (49 CFR Part 29) are delineated in italics. All other provisions are set forth under the authority of the transit system.

Substance Abuse Professionals:

Primary SAP: Connie Merrell-McDonald, MA, LPCC, LPAT, LADAC, CEAP, SAP
New Mexico Professionals Resource Network, LLC
Address: 6000 Summer Avenue, NE
Albuquerque, NM 87110
1424 Deborah Rd., SE – Suite 202A
Rio Rancho, NM 87124
Telephone Number: (505) 400-4806
Fax: (505) 265-3844
Cell Phone: (505) 239-7128
Email: connie@nmprn.com
www.nmprn.comm

Collection Sites:

Name: Concentra
Address: 720 St. Michaels Drive
Santa Fe, New Mexico 87505
Telephone Number: (505) 438-9402
*DOT Certified

Name: White Sands Drug & Alcohol
Address: 1110 Washington Avenue
Alamogordo, NM 88310
Telephone Number: (575) 434-8734
Fax: (575) 434-8733
*DOT Certified

All provisions set forth in bold face print are included consistent with requirements specifically set forth in 49 CFR Part 655, or Part 40, as amended. Provisions set forth in the Drug Free Workplace Act (49 CFR Part 29) are delineated in italics. All other provisions are set forth under the authority of the transit system.

Attachment B
Safety-Sensitive Positions at City of Las Vegas Meadow City Express

All positions at City of Las Vegas Meadow City Express were reviewed for safety-sensitive duties, as defined in 49 CFR Part 655, to determine the safety-sensitive positions. Additionally, any new positions created in the future will be reviewed for safety-sensitive duties. The following positions were determined to be safety-sensitive:

List the positions in your transit system that perform safety-sensitive duties.

Transit/Operations Supervisor
Clerk/Dispatch (Backup Driver)
Transit Driver/Maintenance Tech
Transit Drivers

All provisions set forth in bold face print are included consistent with requirements specifically set forth in 49 CFR Part 655, or Part 40, as amended. Provisions set forth in the Drug Free Workplace Act (49 CFR Part 29) are delineated in italics. All other provisions are set forth under the authority of the transit system.

Regular or Special

CITY COUNCIL MEETING AGENDA REQUEST

DATE 11/13/2018 **DEPT: Finance** **MEETING DATE: 11/20/2018**

ITEM/TOPIC: Review and approve Resolution 18-49 Disposition of Obsolete, Worn-Out or Unusable Tangible Personal Property

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution 18-49 Disposition of Obsolete, Worn-Out or Unusable Tangible Personal Property.

BACKGROUND/RATIONALE: The City of Las Vegas is requesting review and approval of Resolution 18-49 Disposition of Obsolete, Worn-Out or Unusable Tangible Personal Property.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON
MAYOR

TANA VEGA, INTERIM
FINANCE DIRECTOR
(PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

PURCHASING AGENT
(FOR BID/RFP AWARD)

ESTHER GARDUNO MONTOYA,
CITY ATTORNEY
(ALL CONTRACTS MUST BE REVIEWED)

STATE OF NEW MEXICO
MUNICIPALITY OF CITY OF LAS VEGAS
RESOLUTION NO. 18-49
DISPOSITION OF OBSOLETE, WORN-OUT OR UNUSABLE TANGIBLE PERSONAL PROPERTY

WHEREAS, the Governing Body in and for the Municipality of the City of Las Vegas have adopted NMSA 1978, Section 13-6-1, the State of New Mexico's Disposition of obsolete, worn-out or unusable tangible personal property, and

WHEREAS, said policy was developed for use by the governing bodies of each state agency, local public body, school district and state educational institution, and

WHEREAS, it is the majority opinion of this governing body that the State of New Mexico's, Disposition of Obsolete, Worn-Out or Unusable Tangible Personal Property meets the requirements of the City of Las Vegas, and

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Governing Body of the Municipality of the City of Las Vegas, State of New Mexico hereby adopts the State of New Mexico's Disposition of Obsolete, Worn-Out or Unusable Tangible Personal Property.

RESOLVED: In session this 20th day of November, 2018.

MUNICIPAL GOVERNING BODY
LAS VEGAS, NEW MEXICO

_____
TONITA GURULE-GIRON, MAYOR

ATTEST:

_____
CASANDRA FRESQUEZ, CITY CLERK (SEAL)

APPROVED FOR LEGAL SUFFICIENCY:

_____
ESTHER GARDUNO-MONTOYA, CITY ATTORNEY

13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

A. The governing authority of each state agency, local public body, school district and state educational institution may dispose of any item of tangible personal property belonging to that authority and delete the item from its public inventory upon a specific finding by the authority that the item of property is:

(1) of a current resale value of five thousand dollars ($5,000) or less; and

(2) worn out, unusable or obsolete to the extent that the item is no longer economical or safe for continued use by the body.

B. The governing authority shall, as a prerequisite to the disposition of any items of tangible personal property:

(1) designate a committee of at least three officials of the governing authority to approve and oversee the disposition; and

(2) give notification at least thirty days prior to its action making the deletion by sending a copy of its official finding and the proposed disposition of the property to the state auditor and the appropriate approval authority designated in Section 13-6-2 NMSA 1978, duly sworn and subscribed under oath by each member of the authority approving the action.

C. A copy of the official finding and proposed disposition of the property sought to be disposed of shall be made a permanent part of the official minutes of the governing authority and maintained as a public record subject to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. The governing authority shall dispose of the tangible personal property by negotiated sale to any governmental unit of an Indian nation, tribe or pueblo in New Mexico or by negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities or through the central purchasing office of the governing authority by means of competitive sealed bid or public auction or, if a state agency, through the surplus property bureau of the transportation services division of the general services department.

E. A state agency shall give the surplus property bureau of the transportation services division of the general services department the right of first refusal when disposing of obsolete, worn-out or unusable tangible personal property of the state agency.

F. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D or E of this section, the governing authority may sell or, if the property has no value, donate the property to any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986.

G. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D, E or F of this section, it may order that the property be destroyed or otherwise permanently disposed of in accordance with applicable laws.

H. If the governing authority determines that the tangible personal property is hazardous or contains hazardous materials and may not be used safely under any circumstances, the property shall be destroyed and disposed of pursuant to Subsection G of this section.

I. No tangible personal property shall be donated to an employee or relative of an employee of a state agency, local public body, school district or state educational institution; provided that

nothing in this subsection precludes an employee from participating and bidding for public property at a public auction.

J. This section shall not apply to any property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act [18-10-1 to 18-10-5 NMSA 1978].

K. Notwithstanding the provisions of Subsection A of this section, the department of transportation may sell through public auction or dispose of surplus tangible personal property used to manage, maintain or build roads that exceeds five thousand dollars ($5,000) in value. Proceeds from sales shall be credited to the state road fund. The department of transportation shall notify the department of finance and administration regarding the disposition of all property.

L. If the secretary of public safety finds that the K-9 dog presents no threat to public safety, the K-9 dog shall be released from public ownership as provided in this subsection. The K-9 dog shall first be offered to its trainer or handler free of charge. If the trainer or handler does not want to accept ownership of the K-9 dog, then the K-9 dog shall be offered to an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 free of charge. If both of the above fail, the K-9 dog shall only be sold to a qualified individual found capable of providing a good home to the animal.

History: 1953 Comp., § 6-1-7.1, enacted by Laws 1961, ch. 100, § 1; 1979, ch. 195, § 2; 1984, ch. 47, § 1; 1987, ch. 15, § 1; 1989, ch. 211, § 6; 1995, ch. 181, § 1; 1998, ch. 16, § 1; 2001, ch. 317, § 1; 2007, ch. 57, § 4; 2012, ch. 10, § 1; 2013, ch. 9, § 1.

Regular or Special

CITY COUNCIL MEETING AGENDA REQUEST

DATE 11/13/2018 **DEPT: Finance** **MEETING DATE: 11/20/2018**

ITEM/TOPIC: Review and approve Resolution 18-48 City of Las Vegas Internal Control Policy

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution 18-48 City of Las Vegas Internal Control Policy.

BACKGROUND/RATIONALE: The City of Las Vegas is requesting review and approval of Resolution 18-48 City of Las Vegas Internal Control Policy.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON
MAYOR

TANA VEGA, INTERIM
FINANCE DIRECTOR
(PROCUREMENT)

ANN MARIE GALLEGOS,
INTERIM CITY MANAGER

PURCHASING AGENT
(FOR BID/RFP AWARD)

ESTHER GARDUNO MONTOYA,
CITY ATTORNEY
(ALL CONTRACTS MUST BE REVIEWED)

STATE OF NEW MEXICO
MUNICIPALITY OF CITY OF LAS VEGAS
RESOLUTION NO. 18-48
CITY OF LAS VEGAS INTERNAL CONTROL POLICY

WHEREAS, the Governing Body in and for the Municipality of the City of Las Vegas, State of New Mexico have developed an Internal Control Policy, and

WHEREAS, said policy was developed on the basis of need and through cooperation with City Administration and elected officials, and

WHEREAS, document has been prepared to demonstrate the internal accounting policies and procedures applicable to the City of Las Vegas, and

WHEREAS, its purpose is to ensure that assets are safeguarded, financial statements are in conformity with generally accepted accounting principles, and finances are managed with responsible stewardship, and is intended to formalize accounting policies and selected procedures for the accounting staff and to document internal controls, and

WHEREAS, it is the majority opinion of this governing body that the City of Las Vegas Internal Control Policy meets the requirements as currently determined, and,

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Governing Body of the Municipality of the City of Las Vegas, State of New Mexico hereby adopts the City of Las Vegas Internal Control Policy.

RESOLVED: In session this 20th day of November, 2018.

MUNICIPAL GOVERNING BODY
LAS VEGAS, NEW MEXICO

_____
TONITA GURULE-GIRON, MAYOR

ATTEST:

_____
CASANDRA FRESQUEZ, CITY CLERK (SEAL)

APPROVED FOR LEGAL SUFFICIENCY:

_____
ESTHER GARDUNO-MONTOYA, CITY ATTORNEY

LAS VEGAS

NEW MEXICO

NEW ADVENTURES DOWN OLD TRAILS

CITY OF LAS VEGAS, NEW MEXICO

INTERNAL CONTROL POLICIES AND PROCEDURES

INTRODUCTION

The following accounting manual is intended to provide an overview of the accounting policies and procedures applicable to the City of Las Vegas. Its purpose is to ensure that assets are safeguarded, financial statements are in conformity with generally accepted accounting principles, and that finances are managed with responsible stewardship. This manual is intended as well to formalize accounting policies and selected procedures for the accounting staff and to document internal controls.

The contents of this manual were approved as official policy of the City of Las Vegas by the City Council and Finance Director. All Finance employees from the City of Las Vegas are bound by the policies herein, and any deviation from established policy is prohibited.

GENERAL POLICIES

Finance Department Responsibilities

The Finance Director is responsible for direction and oversight regarding the overall financial management of the City of Las Vegas.

Functions of the Finance Department include:

1. Preparation and review of the City's annual budget
2. Monitoring actual vs. budgeted financial performance
3. Long-term financial planning
4. Invests City funds and monitors performance
5. Oversight of reserve funds
6. Responsible for recommending the hiring of and communicating with an independent CPA firm to fulfill the requirement for an annual audit.
7. Prepares the final audited financial statements (CAAFR)
8. Responsible for payroll duties and responsibilities
9. Responsible for accounts payable duties and responsibilities
10. Responsible for procurement duties and responsibilities
11. Responsible for maintenance and control of Fixed Assets

FINANCE DEPARTMENT OVERVIEW

Organization

The finance department consists of seven permanent full time staff members that manage and process financial information for the City of Las Vegas. The positions comprising the Finance Department of the City of Las Vegas, and the titles of each position used throughout this manual, are as follows:

- Finance Director
- Deputy Finance Director
- General Accountant
- Payroll Clerk
- Accounts Payable Clerk
- Purchasing Agent/Supervisor
- Purchasing Warehouse Specialist

Responsibilities:

The primary responsibilities of the Finance Department consist of:

- General Ledger
- Budgeting
- Annual Audit
- Financial Statements Preparation
- Cash and Investment Management
- Grants Administration (Compliance)
- Purchasing
- Revenues
- Cash Receipts
- Accounts Payable
- Cash Disbursements
- Payroll
- Bank Reconciliation

- Cash Reconciliation
- External Reporting of Financial Information
- Compliance with Government Reporting Requirements

SECURITY

Accounting Department

Blank check stock is kept in a locked cabinet inside the finance vault; the petty cash box is stored in a locked drawer in the finance vault.

Access to Electronically Stored Accounting Data

It is the policy of the City of Las Vegas to utilize passwords to restrict access to accounting software and data. Only duly authorized accounting personnel with data input responsibilities will be assigned passwords that allow access to the system.

Accounting personnel are expected to keep their passwords secret. Administration of passwords shall be performed by the Finance Director and IT department. Each password enables a user to gain access into the accounting software only to those menus necessary for each employee's required duties.

Storage of Back-Up Files

It is the policy of the City of Las Vegas and responsibility of the IT Department to maintain backup copies of electronic data files offsite in a secure, fire-protected environment, back-up is performed on a daily basis. Access to back-up files shall be limited to individuals authorized by management.

GENERAL LEDGER AND CHART OF ACCOUNTS

The general ledger is defined as a group of accounts that supports the information shown in the major financial statements. The general ledger is used to accumulate all financial transactions of the City of Las Vegas, and is supported by subsidiary ledgers that provide details for certain accounts in the general ledger. The general ledger is the foundation for the accumulation of data and reports.

Chart of Accounts Overview

The chart of accounts is the framework for the general ledger system, and therefore the basis for the City of Las Vegas accounting system. The chart of accounts consists of account titles and account numbers assigned to the titles. General ledger accounts are used to accumulate transactions and the impact of these transactions on each asset, liability, net asset, revenue, and expense account.

The City of Las Vegas chart of accounts is comprised of five types of accounts:
100 Assets
200 Liabilities
300 Equity
400--500 Revenues
600–890 Expenses

There are three types of accounts: balance sheet, revenues and expense accounts. Balance sheet accounts are asset, liability, and equity accounts and they appear on the statement of financial position. The revenue and expense accounts, as well as gain and loss accounts, appear on the statement of activities. The revenue and expense accounts are annually closed or zeroed out, but balance sheet accounts are permanent.

Accounts are numbered using a three digit sequence for fund (*), a four digit sequence for department, a three digit sequence for category, and a 4 digit sequence for object.

(*) A *fund* is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The City of Las Vegas, like other state and local government, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the City of Las Vegas can be divided into three categories; governmental funds, proprietary funds and fiduciary funds.

Control of Chart of Accounts

The City of Las Vegas chart of accounts is monitored and controlled by the Director of Finance. Responsibilities include the handling of all account maintenance, such as additions and deletions. Any additions or deletions of accounts should be approved by the Finance Director, who ensures that the chart of accounts is consistent with the organizational structure of the City of Las Vegas and meets the needs of each division and department.

Assets

Assets are probable future economic benefits obtained or controlled by the City as a result of past transactions or events. Assets are classified as current assets, fixed assets, contra-assets, and other assets.

Current assets are assets that are available or can be made readily available to meet the cost of operations or to pay current liabilities. Some examples are cash, temporary investments, and receivables that will be collected within one year of the statement of financial position date.
Fixed assets are tangible assets with a useful life of more than one year that are acquired for use in the operation of the organization and are not held for resale.
Contra-assets are accounts that reduce asset accounts, such as accumulated depreciation and reserves for uncollectible accounts receivable.
Other assets include long-term assets that are assets acquired without the intention of disposing them in the near future. Some examples are security deposits, property and long-term investments.

Liabilities

Liabilities are probable future sacrifices of economic benefits arising from present obligations of the City to transfer assets or provide services to other entities in the future as a result of past transactions or events. Liabilities are classified as a current or long-term.

Current liabilities are probable sacrifices of economic benefits that will likely occur within one year of the date of the financial statements or which have a due date of one year or less. Common examples of current liabilities include accounts payable, accrued liabilities, short-term notes payable, and deferred revenue.
Long-Term Liabilities are probable sacrifices of economic benefits that will likely occur more than one year from the date of the financial statements. An example is the noncurrent portion of a bond payable.

Net Assets

Net Assets is the difference between total assets and total liabilities. See the next section for City of Las Vegas policies on classifying net assets.

Revenues

Revenues – The City of Las Vegas governmental funds are principally supported by taxes and intergovernmental revenues. Business type activities funds recover all or significant portion of their cost through user fees and charges.

The governmental activities from City of Las Vegas include general government, public safety, community development, public works, and parks and recreation. The business type activities of the City of Las Vegas include water, gas, wastewater, solid waste, and public housing.

Expenses

Expenses are outflows or other using up assets or incurrence's of liabilities from delivering or producing goods, rendering services, or carrying out other activities that constitute the City of Las Vegas ongoing major or central operations.

Classification of Net Assets

In the Government-wide financial statements and proprietary fund financial statements, net assets are reported in three categories: net assets invested in capital assets, net of related debt; restricted net assets, and unrestricted net assets. Restricted net assets represent net assets restricted by parties outside of the City (such as creditors, grantors, contributors, laws, and regulations of other governments) and include unspent proceeds of bonds issued to acquire or construct capital assets. The City's other restricted net assets are temporarily restricted (ultimately expendable assets). All other net assets are considered unrestricted.

Changes to the Chart of Accounts

Additions to, deletions from or any other changes to the City of Las Vegas standard chart of accounts shall only be done with approval of the Finance Director.

City of Las Vegas Fiscal Year

The City of Las Vegas shall operate on a fiscal year that begins on July 1st and ends on June 30th.

Journal Entries

All general ledger entries that do not originate from a subsidiary ledger shall be supported by the corresponding documentation which shall include a reasonable explanation of each such entry. Examples of such journal entries include:

1. Recording of non-cash transactions
2. Corrections of posting errors
3. Non-recurring accruals of income and expense

Certain journal entries, called recurring journal entries, occur in every accounting period. These entries may include, but are not limited to:
1. Accruals of recurring expenses
2. Interest Allocation
3. Due to Due from account adjustment

It is the policy of the City of Las Vegas that all journal entries not originating from a subsidiary ledger shall be authorized by the Finance Director and/or Deputy Finance Director.

POLICIES ASSOCIATED WITH REVENUES AND CASH RECEIPTS

REVENUE

Revenue Recognition Policy

The City of Las Vegas receives revenue from several types of transactions. Revenue is recognized depending on the type of fund the revenue pertains to.

Revenues in the government-wide, proprietary and fiduciary fund financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded at the time the liabilities are incurred, regardless of when the related cash flows take place. Non-exchange transactions, in which the City gives (or receives) value without directly receiving (or giving) equal value in exchange, include property and sales taxes, grants, entitlements and donations. On an accrual basis, revenue from property taxes is recognized in the fiscal year for which the taxes are levied. Revenues from sales tax are recognized when the underlying transactions take place. Revenues from grants, entitlements and donations are recognized in the fiscal year in which all eligible requirements have been satisfied.

Revenues in the governmental funds are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under this method, revenues are recognized when susceptible to accrual (i.e., when they are "measurable and available"). "Measurable" means the amount of the transaction can be determined and "available" means collectible within the current period or soon enough thereafter to pay liabilities of the current period. The City considers all revenues available if they are collected within 30 days after yearend.

Expenditures are recorded when the related fund liability is incurred, except for debt service expenditures which are recognized when due, and certain compensated absences and claims and judgments which are recognized when the obligations are expected to be liquidated with expendable available financial resources. General capital assets acquisitions are reported as expenditures in governmental funds. Proceeds of general long-term debt and capital leases are reported as other financing sources.

Property taxes, transient occupancy taxes, and interest are susceptible to accrual. Sales taxes collected and held by the state at year-end on behalf of the City are also recognized as revenue. Other receipts and taxes become measurable and available when cash is received by the City and are recognized as revenue at that time.

Entitlements and shared revenues are recorded at the time of receipt or earlier if the susceptible to accrual criteria are met. Expenditure-driven grants are recognized as revenue when the qualifying expenditures have been incurred and all other grant requirements have been met.

Classification of income and Net Assets

Certain assets of special revenue grant funds are classified as restricted assets because their use is restricted by grant agreements.

Certain resources of the debt service fund and the Water, Solid Waste and Wastewater funds are set aside for the repayment of bonds and are classified as restricted assets on the balance sheet because their use is limited by applicable bond covenants.

Other restricted resources consist of funds limited as to use by donors. Restricted gifts, bequests and grants are reported as restricted funds until expenditures are made for the donor's intended purpose.

CASH RECEIPTS

Overview

Cash (including checks payable to the City) is the most liquid asset an organization has. Therefore, it is the objective of the City of Las Vegas to establish and follow the strongest possible internal controls in this area.

In-House Cash Receipts Processing

For funds that are received directly at the City of Las Vegas, cash receipts are centralized to ensure that cash received is appropriately directed, recorded and deposited on a timely basis. All cash is entered and posted by the customer service utility clerks in the utility billing department of finance.

The individuals who entered, posted and prepared the daily list of cash receipts shall not be involved in the accounts receivable process.

The Customer Service Utility clerk processes payments received through the "Cashiering" module of the Tyler accounting program. At the end of the day the clerk will release the batches created which reflects the number of receipts and the batch dollar amount total. The clerk will now output and release the payment batch for proofing and posting to the general ledger by the finance general accountant.

A deposit slip is prepared from the cash/check received and compared to the daily receipts listing for discrepancies. Deposits are prepared and taken to the bank by an individual other than the employee who prepared the daily cash receipts listing.

Endorsement of Checks

It is the policy of the City of Las Vegas that all checks received that are payable to the City shall immediately be restrictively endorsed by the customer service representative that prepares the daily receipts listing. The restrictive endorsement shall be through the register, for all receipts at the window and mail and includes the following information:

1. "For Deposit Only"
2. "City of Las Vegas"
3. Account No.

Timeliness of Bank Deposits

The City of Las Vegas deposits monies in bank(s) within 24 hours of collection.

Reconciliation of Deposits

On a monthly basis, the accountant, who does not prepare the initial cash receipts listing or bank deposit, shall reconcile the listings of receipts to bank deposits reflected on the monthly bank statement. Any discrepancies shall be immediately investigated and reported to the Director of Finance or Deputy Finance Director.

POLICIES ASSOCIATED WITH EXPENDITURES AND DISBURSEMENTS

PURCHASING POLICIES AND PROCEDURES

See City of Las Vegas's Resolution No. 14-18 Adopting the State Procurement Code and the Federal Procurement Code. This policy was adopted by City Council on March 19, 2014.

The policies and procedures for all purchases made by the City of Las Vegas are in accordance with City of Las Vegas Resolution No. 14-18.

Overview

It is the policy of the City of Las Vegas to follow a practice of ethical, responsible and reasonable procedures related to purchasing, agreements and contracts, and related forms of commitment. The purchase policy describes the principles and procedures that all staff shall adhere to in the completion of their designated responsibilities.

Procedures – responsibility for purchasing

The Director of Finance, or in the alternative such other person as may be designated in writing by the City Manager, shall be and is appointed to perform the functions of the Purchasing Officer for the City. All purchases and contracts shall be reviewed and approved by the Director of Finance.

All department directors shall have the authority to initiate purchases on behalf of their department within the guidelines described in the City's purchase policy. Department Heads may delegate purchasing authority to responsible individuals within their department. Directors' shall inform the finance department of all individuals that may initiate purchase requisitions in order to complete the configuration in TYLER.

The system administrator (Finance Director) will set up the individual's purchase and requisition authority within the TYLER system.

All City purchases require a requisition. Requisitions must be entered into the accounting system "TYLER".

The requisitions will be electronically routed for approval to the respective manager, department head, Purchasing Agent. Because the Finance Director is an approver she/he shall not have the authority to initiate purchase requisitions and purchase orders. A purchase order will be issued by the Finance Department only after the requisition has been approved at all of these levels.

The requisition must include the following information:

1. Description of item (goods/services) being requested for purchase.
2. General ledger account number.
3. Amount of purchase
4. Quantity

    a. All purchases requested "Requisitions" must be approved by immediate supervisor/manager and department head.
    b. All "Requisitions" should be approved by the Finance Director.

5. Once a requisition has been released by the originator (and fully approved), it is then eligible to be converted to a purchase order. Once requisitions are converted, they are ready to be reviewed, posted and printed. The Purchasing Agent distributes hard copies of all converted purchase orders to the respective department and finance accounts payable department. The conversion process is performed twice a day.

6. All Purchase Order may be received electronically in the TYLER system. The receiving program acts as confirmation that goods/services have been received so that staff can process the related invoices.

7. The designated staff in each department has to prepare the account payable packages in order to proceed with the payment of the invoice. (Please refer to Accounts Payable policy and Procedures for more detail)

Vendor Files and Required Documentation

The Finance Department (Purchasing Agent) shall create a vendor folder for each new vendor from whom the City of Las Vegas purchases goods or services.

Prior to making the initial purchase from any vendor (regardless of whether a contract is involved), the Finance Department (Purchasing Agent) shall receive from the vendor a complete and signed Form W-9 and verification of a State of New Mexico CRS number. The completed and signed Forms W-9 shall be filed in each vendor's folder.

Ethical Conduct in Purchasing

Ethical conduct in managing the City's purchasing activities is an absolute essential. Staff must always be mindful that they represent the City of Las Vegas and share a professional trust with other staff and the general membership.

Staff shall discourage the offer of, and decline, individual gifts or gratuities of value in any way that might influence the purchase of supplies, equipment, and/or services.

CASH DISBURSEMENTS (CHECK-WRITING) POLICIES

Check Preparation

It is the policy of the City of Las Vegas to print vendor checks and expense reimbursement checks on a weekly basis. Checks shall be prepared by persons independent of those who initiate or approve expenditures, as well as those who are authorized check signers.

All vendor and expense reimbursement checks shall be produced in accordance with the following guidelines:

- Expenditures must be supported in conformity with the purchasing, accounts payable, and travel, expense and reimbursement policies described in this manual.

- Timing of disbursements should generally be made to take advantage of all early-payment discounts offered by vendors.

- Generally, all vendors shall be paid within 30 days of submitting a proper invoice upon delivery of

the requested goods or services.

- Total cash requirements associated with each check run is monitored in conjunction with available cash balance in bank prior to the release of any checks.

- All supporting documentation is attached to the corresponding check prior to forwarding the A/P package to an authorized check signer.

- Checks shall be printed in numerical order.

- Checks shall never be made payable to "bearer" or "cash".

- Checks shall never be signed prior to being prepared. (No signed blank checks).

- Upon the preparation of a check, vendor invoices and other supporting documentation shall immediately be stamped with “PAID” in order to prevent subsequent reuse.

Check Signing

No checks shall be signed prior to the check being completed in its entirety (no signing of blank checks).

It is the policy of the City of Las Vegas that each check shall be signed by *two* authorized check signers.

At least one of the check signers should examine all original supporting documentation to ensure that each item has been properly checked prior to signing a check. Checks should not be signed if supporting documentation appears to be missing or there are any questions about a disbursement.

Mailing of Checks

After signature, checks are returned to the individual who prepared them, who then mails checks immediately. Checks shall not be mailed by individuals who authorize expenditures.

Voided Checks and Stop Payments

Checks may be voided due to processing errors by making proper notations in the check register and defacing the check by clearly marking it as "VOID". All voided checks are processed by the Accounts Payable Clerk. (See accounts payable policy for procedures performed in processing voided checks).

Stop payment orders may be made for checks lost in the mail or other valid reasons. Stop payments are processed by the Accounts Payable Clerk directly with the associated bank with a "Request to Stop Payment" form filed with the bank.

Record-Keeping Associated with Vendors

The City of Las Vegas shall obtain a completed Form *W-9* from all vendors to whom payments are made. A record shall be maintained of all vendors to whom a Form 1099 is required to be issued at year-end. Payments to such vendors shall be accumulated over the course of a calendar year.

PAYROLL

Payroll Taxes

The Finance Department is responsible for ensuring that all required tax forms are properly completed and submitted, and that all required taxes are withheld and paid. Payroll taxes are paid on pay dates through EFPTS payments online

Preparation of Timesheets

Each City of Las Vegas employee must submit a signed and approved timesheet no later than 12:00 noon on the Tuesday following the close of each pay period. Timesheets shall be prepared in accordance with the following guidelines:

1. Each timesheet shall reflect all hours worked during the pay period.
2. Timesheets shall be prepared in ink .
3. Errors shall be corrected by crossing through the incorrect entry, filling in the correct entry, and placing the employee's initials next to the change (i.e. employees shall not use "white out" or correction tape)
4. Compensated absences should be clearly identified as such
5. Timesheets must be signed by the employee.

After preparation, timesheets shall be approved by department directors or his/her designee, prior to submission to the Finance Department. Corrections identified by an employee's supervisor/ department director shall be authorized by the employee by placing the employee's initials next to the change. In the event that the employee or supervisor is unavailable the director may sign authorizing the correction.

A City employee who is on leave, on travel, or is ill on the day that timesheets are due may telephone or e-mail timesheet information to his or her supervisor (or designated alternate). Time so submitted must reflect the actual time worked. The employee must initial a timesheet submitted in this manner immediately upon his/her return to the office. Timesheets submitted in this manner shall bear the notation, "Time reported by telephone or e-mail by employee to supervisor or designated alternate". The timesheet shall be signed by the supervisor or the designated alternate.

Processing of Timesheets

All departments are assigned with entering and approving timesheet entry in the ESS program of TYLER. Upon approval, the time entry flows into TYLER for payroll processing. The Payroll Clerk checks all timesheets for mathematical accuracy and accuracy of input into ESS.

The Payroll Clerk may not change or correct timesheets. When errors are noted, a corrected and approved timesheet will be requested from the employee and respective supervisor.

Tampering with, altering, or falsifying time records, recording time on another employee's time record, or willfully violating any other timesheet policy or procedure is not allowed.

Direct Deposit and payroll checks

The transfer of the direct deposit is conducted through Southwest Capital Bank ACH. In order to transfer the direct deposit the City should provide to the bank a security key code. The Payroll Clerk should make sure a direct deposit confirmation is received after every transfer. The printing of the payroll checks require security paper and a MICR ink.

The checks are signed with a two signature stamp bearing the signatures of the Mayor and the Finance Director and is locked in a safe in the Finance Director's office that only approved personnel has access to.

Review of Payroll

Upon production of all payroll reports, the Director of Finance and/or designee reviews payroll reports, taxes to be paid and all other relevant information. These procedures shall be performed prior to the checks being printed and the transfer of direct deposits is initiated.

Distribution of Payroll

Payroll payments (or check stubs for electronic deposits) shall be distributed by individuals who do not approve time sheets, are not responsible for hiring and firing.

POLICIES PERTAINING TO SPECIFIC ASSET AND LIABILITY

CASH AND CASH MANAGEMENT

Cash Accounts

General Checking Account (operating account):
The primary operating account for the governmental funds provides for routine check disbursements. All cash and ACH deposits, whether received at the City of Las Vegas Customer Service Department are made to this account

Authorized signers on the general checking account include the following; Mayor and Finance Director.

Payroll Account:

The payroll account is separate from the operating account. The payroll account is a zero-balance account (ZBA). As such, only the amount needed to cover each payroll is transferred into this account from three operating accounts (General, Enterprise, and Housing) based on the amount calculated.

Authorized signers on the payroll account include the following; Mayor and Finance Director.

Enterprises:
The primary operating account for the Utility Funds provides for routine utility related check disbursements. All cash and credit card deposits, whether at the City of Las Vegas Customer Service Department or online, are made to this account.

Authorized signers on the payroll account include the following; Mayor and Finance Director.

Bank Reconciliations

Bank account statements are received each month by mail and forwarded unopened to the Finance Director. The Finance Director opens the statement and reviews its contents for unusual or unexplained items. Unusual or unexplained items shall be reported immediately to the bank representative.

After this review is complete, the entire bank statement is forwarded to the Accountant. The Accountant prepares the reconciliation between the bank balance and general ledger balance; the accountant shall not be an authorized check signer. It is the policy of the City of Las Vegas to complete the bank reconciliation process within two weeks of receipt of each bank statement.

The bank reconciliation, including any adjusting journal entries resulting from preparing bank reconciliations are reviewed and approved by the Director of Finance on a monthly basis.

Cash Reconciliation and copies of resulting journal entries are filed in the current year's accounting files.

Cash Flow Management

The Director of Finance monitors cash flow needs on a weekly basis to eliminate idle funds and to ensure that payment obligations can be met. Cash transfers between accounts are performed on an as-needed basis.

Stale Checks

The Finance Department reviews stale dated checks and attempts to reach out to the payee as to the status of the check. Efforts are made to stop payment, void and reissue a stale dated check.

Wire Transfers

The Finance Director and Payroll Clerk shall be the only City of Las Vegas employees authorized to transact wire transfers from the City of Las Vegas bank accounts.

To prevent anyone other than the Director of Finance and the Payroll Clerk from transacting wire transfers, a system is in place with Southwest Capital Bank where prior authorizations have been executed. All wire transfers require the completion of a form detailing the amount, reason date and type of wire transfer. Confirmation of all wire transfers are delivered to the Finance Director.

The Payroll Clerk shall be authorized to do wire transfers just in the following cases and with prior approval from the Director of Finance:

- Payroll employees Direct Deposits
- Payroll Taxes
- Payroll Benefits (Retirement)
- Payroll Deductions (Deferred Compensation)

INVESTMENT POLICY

See City of Las Vegas's Resolution No. 10-04 Investment Policy.

POLICIES ASSOCIATED WITH FINANCIAL AND TAX REPORTING

FINANCIAL STATEMENTS

Standard Financial Statements of the City of Las Vegas

Preparing financial statements and communicating key financial information is a necessary and critical accounting function. Financial statements are management tools used in making decisions, in monitoring the achievement of financial objectives, and as a standard method for providing information to interested parties external to the City of Las Vegas. The basic financial statements of the City of Las Vegas shall include:

1. Statement of Financial Position (Balance Sheet)- reflects assets, liabilities and net assets of the organization and classifies assets and liabilities as current or non-current/long-term.
2. Statement of Activities (Income Statement) - presents revenues, expenses, and other changes in net assets of the organization, by category of net asset (unrestricted, temporarily restricted and permanently restricted).

Frequency of Preparation

The objective of the Finance Department is to prepare accurate financial statements in accordance with generally accepted accounting principles and distribute them in a timely and cost-effective manner. In meeting this responsibility, the following policies shall apply:

State law requires that all general-purpose local governments publish within six months of the close of each fiscal year a complete set of financial statements presented in conformity with accounting principles generally accepted in the United Stated of America and audited in accordance with auditing standards generally accepted in the United States of America by licensed certified public accountants.

Annual Financial Statements

A formal presentation of the City of Las Vegas annual financial statements shall be provided by the Independent Auditor to the City Council of the City at a regular scheduled council meeting.

GOVERNMENT RETURNS

Overview

To legitimately conduct business, City of Las Vegas must be aware of its tax and information return filing obligations and comply with all such requirements of federal, state and local jurisdictions. Filing requirements of City of Las Vegas include, sales tax returns, information returns for retirement plans, retiree health insurance plans, State of New Mexico Department of Finance quarterly reports, Lodgers Tax quarterly reports, annual reporting of compensation paid, and payroll tax withholding tax returns.

Filing of Returns

It is the policy of the City of Las Vegas to become familiar with the obligations in each jurisdiction and to comply with all known filing requirements. The Finance Department shall be responsible for identifying all filing requirements and assuring that the City of Las Vegas is in compliance with all such requirements.

It is also the policy of the City of Las Vegas to file complete and accurate returns with all authorities. City of Las Vegas shall make all efforts to avoid filing misleading, inaccurate or incomplete returns.

Filings made by the City of Las Vegas include, but are not limited to, the following returns:

1. W-2's and 1099's -Annual report of employee and non-employee compensation, based on calendar-year compensation, on the cash basis. These information returns are due to employees and independent contractors by January 31 and to federal government by January 31.
2. W-3 Transmittal of wage and tax statement to the Social Security Administration used for the transmittal of total wages paid.
3. Form 941 -Quarterly payroll tax return filed with IRS to report wages paid to employees and federal payroll taxes. Form 941 is due by the end of the month following the end of each quarter, or 10 days later if all payroll tax deposits have been made in a timely manner during the quarter.
4. ESC 802 – Quarterly contribution return and report of wages to the State of New Mexico used to report unemployment wages to the State. (Filed online)
5. CRS – Monthly gross receipts report to the State of New Mexico used for reporting proceeds of a taxable nature and employees state withheld income taxes. (Filed online)
6. P.E.R.A. – Bi-weekly report of employee and employer retirement contribution. (Filed online)
7. RHCA - Monthly report of employee and employer retiree health contribution.

Federal and all applicable State payroll tax returns are prepared by the City of Las Vegas.

BUDGETING

Overview

Budgeting is an integral part of managing any organization in that it is concerned with the translation of organizational goals and objectives into financial and human resource terms. A budget should be designed and prepared to direct the most efficient and prudent use of the organization's financial and human resources. A budget is a management commitment of a plan for present and future organizational activities that will ensure survival. It provides an opportunity to examine the composition and viability of the organization's programs and activities simultaneously in light of the available resources. The budget is a plan that establishes the spending authority for the City's programs and projects during the twelve months budget period. The City's Annual Budget serves as the foundation for the City of Las Vegas Financial Planning and Control.

Prior to June 30 of each year the City Manager submits to the City Council a proposed operating budget for the Fiscal Year commencing the following July 1. The operating budget includes

proposed expenditures and the means of financing them. Public hearings are conducted and prior to July 31, the budget is adopted by motion of the City Council.

The appropriated budget is prepared by Fund, Function (e.g. Public Safety) and department (e.g. Police).

Operating budgets will be prepared to fund current year expenditures with current year revenue. However, surplus fund balances may be used to increase reserves, fund Capital Improvement Projects, or be carried forward to fund future year's operating budgets when necessary to stabilize services and fund capital outlay.

The City will deliver services in the most cost effective manner, including utilizing the services of volunteers in areas where it is economically viable.

Budgets will state the objectives of operating programs and identify the services and resources being provided to accomplish the specified objectives.

Budgets will fully account for and apportion all costs, fees and General Fund transfers associated with the Enterprise Funds.

Departmental expenditures are limited to City Council appropriated expenditures in the following major categories:
Personal Services
Supplies & Services
Capital Outlay

The City will periodically update replacement and maintenance financing plans and incorporate them into the Budget.

Budgets are adopted annually and all annual appropriations lapse at fiscal yearend.

Monitoring Performance

It is the policy of the City of Las Vegas to monitor its financial performance by comparing and analyzing actual results with budgeted results. This function shall be performed periodically by the Finance Director.

Budgetary review

- Budget-to-actual comparisons are made on a monthly basis by the Finance Department.
- Budget-to-actual comparisons are presented for City Council review at midyear and on an as needed basis.
- Budget-to-actual comparisons are provided in the Comprehensive annual financial report for each individual governmental fund, for which an appropriated annual budget has been adopted.

The City maintains an encumbrance accounting system of purchase orders and contracts as a means of accomplishing budgetary control. Purchase orders are reviewed to ensure that funds

are available and that requests are properly authorized prior to being released to vendors.

Budget modifications (transfers)

- Department Directors may request transfers of appropriations within their departmental budgets
- Transfers of appropriations between departments require the authorization of the City Manager.
- Any revision that increases or decreases the total appropriations of any fund must be approved by the City Council and the State of New Mexico Department of Finance and Administration.

ANNUAL AUDIT

Role of the Independent Auditor

It is the policy of the City of Las Vegas to arrange for an annual audit of the City of Las Vegas's financial statements to be conducted by an independent accounting firm. The independent accounting firm selected by the City Council will be required to communicate directly with the City Manager, City Council and Finance Director upon the completion of their audit.

Audited financial statements, including the auditor's opinion thereon, will be submitted and presented to the City Council for their review and approval, after the financial statements have been reviewed and approved by the Finance Director.

Preparation for the Annual Audit

The City of Las Vegas shall be actively involved in planning for and assisting with the City's independent accounting firm in order to ensure a smooth and timely audit of its financial statements. In that regard, the Finance Department shall provide assistance to the independent auditors in the following areas:
Planning - The Finance Director is responsible for delegating the assignments and responsibilities to finance staff in preparation for the audit. Assignments shall be based on the list of requested schedules and information provided by the independent accounting firm.
Involvement -City staff will do as much work as possible in order to assist the auditors and, therefore, reduce the cost of the audit.
Interim Procedures -To facilitate the timely completion of the annual audit, the independent auditors may perform selected audit procedures prior to the City's year-end. By performing significant portions of audit work as of an interim date, the work required subsequent to year-end is reduced. City staff will do as much as possible in order to provide requested schedules and documents and to otherwise assist the auditors during any interim audit fieldwork that is performed.
Throughout the audit process, it shall be the policy of the City of Las Vegas to make every effort to provide schedules, documents and information requested by the auditors in a timely manner.

City Manager, City Council and/or Finance Director/Audit Responsibilities

The Audit responsibilities include, but shall not be limited to, the following:

1. Appointment of, and communication with, the City's independent auditors
2. Review and approval of the annual, audited financial statements
3. Discussion of internal control matters with the independent auditor
4. Responding to any reported instances of fraud involving City of Las Vegas or its employees
5. Conducting an annual analysis of the City's financial statements

Federal Programs

All Federal Programs under the CLV Municipality must comply with Guidance provided in 2 CFR 200 part 303. (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.(c) Evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms and conditions of Federal awards.(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

Regular or Special

CITY COUNCIL MEETING AGENDA REQUEST

DATE 11/13/2018 **DEPT: Finance** **MEETING DATE: 11/20/2018**

ITEM/TOPIC: Review and approve Resolution 18-47 City of Las Vegas Housing Authority Accounting Policy

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution 18-47 City of Las Vegas Housing Authority Accounting Policy.

BACKGROUND/RATIONALE: The City of Las Vegas is requesting review and approval of Resolution 18-47 City of Las Vegas Housing Authority Accounting Policy.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:

TONITA GURULE-GIRON
MAYOR

TANA VEGA, INTERIM FINANCE DIRECTOR (PROCUREMENT)

ANN MARIE GALLEGOS, INTERIM CITY MANAGER

PURCHASING AGENT (FOR BID/RFP AWARD)

ESTHER GARDUNO MONTOYA, CITY ATTORNEY (ALL CONTRACTS MUST BE REVIEWED)

STATE OF NEW MEXICO
MUNICIPALITY OF CITY OF LAS VEGAS
RESOLUTION NO.__18-47____
CITY OF LAS VEGAS HOUSING AUTHORITY ACCOUNTING POLICY

WHEREAS, the Governing Body in and for the Municipality of the City of Las Vegas, State of New Mexico have developed Housing Authority Accounting Policy, and

WHEREAS, said policy was developed on the basis of need and through cooperation with City Administration and elected officials, and

WHEREAS, document has been prepared to demonstrate the internal accounting procedures for the City of Las Vegas Housing Authority (LVHA), and

WHEREAS, its purpose is to ensure that assets are safeguarded, financial statements are in conformity with generally accepted accounting principles, and finances are managed with responsible stewardship, and

WHEREAS, it is the majority opinion of this governing body that the City of Las Vegas Housing Authority Accounting Policy meets the requirements as currently determined, and,

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Governing Body of the Municipality of the City of Las Vegas, State of New Mexico hereby adopts the City of Las Vegas Housing Authority Accounting Policy.

RESOLVED: In session this 20th day of November, 2018.

MUNICIPAL GOVERNING BODY
LAS VEGAS, NEW MEXICO

_____
TONITA GURULE-GIRON, MAYOR

ATTEST:

_____
CASANDRA FRESQUEZ, CITY CLERK (SEAL)

APPROVED FOR LEGAL SUFFICIENCY:

_____
ESTHER GARDUNO-MONTOYA, CITY ATTORNEY

City of Las Vegas Housing Authority Accounting Policy

City of Las Vegas Housing Authority

2400 Sagebrush

Las Vegas, NM 87701

Phone (505)425-9463

lasvegasnm.gov

Introduction

This document has been prepared to demonstrate the internal accounting procedures for the City of Las Vegas Housing Authority (LVHA). Its purpose is to ensure that assets are safeguarded, financial statements are in conformity with generally accepted accounting principles, and finances are managed with responsible stewardship.

This Accounting Policy and Manual has been presented, reviewed and approved by the LVHA Board of Commissioners (Board), Finance Department and Administration.

Housing Authority & Compliance

Department of Housing & Urban Development (HUD)

The mission of LVHA is "The Housing Authority provides safe, adequate, and affordable housing to low income families, in an environment that fosters cultural preservation, self-sufficiency and community pride."

In order to abide by the regulations of both the State of New Mexico and HUD policies, LVHA follows the rule of the stricter of the two policies. For example:

State of New Mexico small purchase threshold is $60,000. HUD policies on small purchase is $150,000. LVHA will abide by the State of NM threshold to consider small purchases at $60,000.

State of New Mexico policy on obtaining certified payroll for a construction project has a threshold of over $60,000 and HUD 's threshold is $2,000. LVHA will abide by the HUD threshold of $2,000 for certified payroll.

HUD Financial Assessment

LVHA follows the Basic Rule Requirements, Uniform Financial Reporting Standards (UFRS) as recommended by HUD. HUD developed the Financial Assessment Subsystem (FASS) specifically to facilitate the LVHA metric as the financial health portion of the overall assessment. Financial and other information must be submitted to the HUD Real Estate Assessment Center (REAC) electronically by the LVHA.

The Public Housing Assessment System (PHAS) rule establishes procedures for the assessment of:

1. Physical condition (40%)
2. Financial condition (25%)
3. Management operations (25%)
4. Capital Fund Program (10%)

   To total 100

The LVHAs indicators listed above act as an annual "report card" to indicate how the agency is performing based on HUD standards. For the two (2) Financial condition listed above, information must be submitted to REAC electronically by the LVHA through the PASS using a template known as the Financial Data Schedule (FDS).

Financial Compliance

The LVHA annual financial reports are completed and audited by an independent audit firm as part of the City of Las Vegas' independent audit. It is submitted to the City of Las Vegas to be part of the CAFR and to the State of New Mexico for approval of the final audit. Once the State has approved the audit, it is then submitted to HUD via the REAC FDS.

The annual FDS is prepared by the LVHA using Generally Accepted Accounting Principles (GAAP) standards for state and local governments and is reported on by the independent auditor as to its fair presentation in relation to the audited financial statements. The Government Accounting Standards Board (GASB) issues relative accounting practices on an annual basis. As these documents are released, LVHA modifies the procedures to conform to the new GASB standards, if applicable.
GASB provides for two bases of accounting depending on the activities of the governmental entity - "enterprise fund" or "governmental fund" accounting. Since the overwhelming majority of PHAs possess the characteristics of enterprise funds, they follow GASB enterprise fund accounting principles.

GASB issued Statement No. 34, Basic Financial Statements--and Management's Discussion and Analysis-for State and Local Governments, which mandates government-wide or other financial statements using full accrual accounting like that utilized by enterprisefunds.

Compliance with External Policies

Housing Authority accounting policies and procedures are compliant with GAAP accounting principles as established by the Financial Accounting Standards Board (FASB), the Government Accounting Standards Board (GASB):

- **OMB Directives-** *The audit of an entity's basic financial statements, Grant compliance and internal controls.*
- **Uniform Financial Reporting Standards (UFRS)-** *Rule implementing requirements of 24* CFR, *Part 5, Subpart H, for the electronic filing of financial information to REAC by entities receiving HUD financial assistance.*
- **GASB Statements-** *New accounting rules as implemented by the New Mexico Office of the State Auditor(OSA).*
- **Statement on Auditing Standards –** (SAS) No. 29, *Reporting on Information Accompanying the Basic Financial Statements inAuditor-Submitted Documents*

Board of Housing Commissioners

The LVHA encourages community members to stay informed on current issues and business actions pertaining to its housing programs and policies. All meetings of the Board shall be open to the public unless, for a specifically named and limited purpose, a meeting is scheduled as a closed meeting or an open meeting is called into a closed session. Las Vegas Housing Authority Board of Housing Commissioners are the City of Las Vegas Governing Body.

Board Meetings

Regular Meetings are held on the 3rd Wednesday of each month, unless otherwise posted. Meetings are held at 5:30 pm City of Las Vegas Council Chambers, unless otherwise posted.
Notice of meetings shall be in accordance with the State of New Mexico Open Meetings Act, §10-15-1 et seq. and have passed Resolution No. 18-01 in compliance with the Open Meetings Act.

Board Responsibilities

The New Mexico Municipal Housing Act rest the powers to carry out the activities of the Housing program to the CLV Governing Body. The Board is the Authority of the Housing Program. The Annual Contributions Contract that CLV is entered into with HUD requires that the Housing Authority (Board) complies with all the rules and regulations.

The Accounting Function

To ensure compliance on a daily basis with regards to all accounting functions, this policy is a regulatory guide to the various functions including but not limited to; cash management, receipts, disbursements, accounting, funding, purchasing and grant or contract management. The finance department has evaluated the process and procedures that staff follows to ensure all industry regulations are being followed. Desktop procedures exist and are reviewed annually to ensure consistent and compliant practice.

Prevention and detection of fraud and mismanagement is another factor in considering process and procedures. HUD's Office of the Inspector General (OIG) recommends the implementation of strong internal controls, through accounting policies and procedures, in order to help mitigate the potential for fraud. The most effective internal control concept is separation of duties.

An ideal system of internal controls will separate the below functions:

- Authorizing transactions
- Keeping books
- Handling funds

When two or more of these functions are in the control of one person, the potential for fraud is greatly increased. On occasion, when staff size is too small to permit separation of duties, a closer level of supervision is utilized which may include the ED, Department Manager, or Finance Director (or their designee) from the City of Las Vegas, being called in to verify a process.

The Finance Department recognizes this role and is responsible in communicating the education of the current state of affairs to the Board and the E.D. who hold direct responsibility for ensuring that the LVHA's housing programs are carried out in an honest, efficient, and effective manner.

Some key components to reporting the fiscal state of affairs and oversight to the internal controls includes reducing opportunity for fraud or mismanagement through the following:

- Annual review of the manual for any updates or necessary changes;
- Employee Performance Review and monthly coaching of staff to suggest improvement in daily process;
- Vacation and leave time for regular staff. This can provide the back-up staff the ability to check the validity of a process for accuracy;
- Review of processes outside of the annual review when either new staff is hired or new industry

regulations are implemented;

- Strong Internal Controls supported through procedures;
- Rotation of staff duties for staff responsible for cash management;
- Annual training and skill enhancement opportunities to review roles and responsibilities.

Fraud Prevention & Cash Management

Education and strict adherence to the roles and procedures of daily financial management is the first step to fraud prevention. This begins by hiring and educating staff on the importance of financial management handling, which includes reviewing all preventative measures as well as ensuring all LVHA procedures are being followed.

Financial Management & Investment Policy

Daily Deposits are checked and verified by a person who is not the individual who receives payments. They are then placed in a locked secure bag and taken to the utilities department for recording and deposited into the appropriate bank accounts by the utilities department.

Financial management is the process of managing the financial flow of the LVHA to optimize its use of funds. This process involves the timing of receipts and disbursements to assure the availability of funds to meet expenditures and to maximize the yield from the investment of temporary surplus funds.

The Investment Policy is published as an additional document by the City of Las Vegas Finance Department as Resolution No. 10-04; LVHA shall follow the policy that is approved by the CLV Governing Body.

Financial Disbursements Process

In the disbursement process, there are two independent verification steps to be taken before the payments are sent. It is performed by a person removed from custodial, recording and approval duties. This control step addresses the issue of fraudulent supporting documents, which can easily be produced and inserted into the invoice processing and check preparation stages.

1. The City of Las Vegas adopted the State of New Mexico's Procurement Policy with Resolution 12-24, the LVHA complies with the more stringent of the state and federal rules.
2. After properly procured requisitions are entered into the system.
3. The City of Las Vegas' Chief Procurement Officer then processes purchase orders based of the recommendation depending on the threshold by the CLV Finance Director and City Manager.
4. After services are rendered or goods are received the LVHA processes invoices for payments, and sends the invoices or requests for payment to the CLV accounts payable.
5. The Pre-Check report is run and verified by the CLV Accounts Payable in the Finance Department.
6. Check stock is controlled and disbursed by an Accountant in CLV Finance Department.
7. Checks are run by the Accounts Payable Clerk in the CLV Finance Department.
8. Positive pay report is run that includes the check number, amount and quantity to verify against the check listing report by the CLV Finance Department.
9. The report is then submitted to the bank by the CLV General Accountant which completes full bank reconciliation.
10. Checks are distributed. ***Note:*** *Any checks are required to be signed by a second signatory, usually the Mayor and the Finance Director. Signature Stamps are kept in secured locked location with only two (2) keys and combinations. Check stock is not kept in this location. All times stamp is used it is logged and signed.*

Internal Accounting Controls

Internal controls ensure that an organization's objectives can be achieved. An adequate system of internal controls is set to properly safeguard assets through the timely recording, reconciling and summarizing of transactions.

It is the job of the ED and Board to bear ultimate responsibility to ensure that an adequate system of internal controls is in place and operating efficiently and effectively.

Adopted Internal Controls
The following items are internal controls performed by CLV.

- The bank statements are reconciled by an independent person at CLV.
- Reduced handlings of cash where two people count receipts and verify deposits at CLV.
- Independent Audit firm is rotated at least every 3 years, and assures audit findings are resolved at CLV. CLV and LVHA follow the NM State Auditor Procurement Act and Regulations guidelines.
- Maximum dollar limits for credit card purchases are maintained by CLV.
- One person does not have total oversight and authority over cash and accounting functions and a backup plan includes higher level review and approval should key staff be absent at CLV.
- The Waiting list Manager is the primary staff member collecting rent, however, staff may be rotated during rent that is collected via check or money order at LVHA and, daily financial management and deposits are maintained by CLV.
- All payments are reviewed and signed by the ED or designee.
- Signature stamps are secured at all times by the Finance Department at CLV.
- All check and cash disbursements are accompanied by an invoice showing that the payment is justified at CLV.
- Background checks are completed on all new employees, including ED's, to avoid a bad hire through the Human Resources Department (HRD) at CLV.
- Unclaimed checks are investigated and resolved annually; unclaimed checks are sent to the State of NM unclaimed properties division through CLV.
- Training programs are instituted by HRD that emphasize good behavior such as ethics classes.

Internal Controls in Action
One of the most important characteristics of a good system of internal controls is separation of duties LVHA and CLV separation of duties is outlined as follows:

- **Mail-** The person responsible for opening the mail is not to be the same person responsible for making deposits, or recording receipts. The mail person is located in the City Clerk's Office and is responsible for receiving, sorting and distributing mail to the assigned department. The Waiting list Manager will then accept the mail from the City Clerk's Office and is responsible for receiving, sorting, opening and date-stamping and distributing mail to the assigned staff members.

- **Bank reconciliations** are completed by CLV and reviewed and approved by the Finance Director. Bank statements are delivered directly to the Accounting Manager and can be accessed directly online at the bank.

- **Journal Entries** QE) have two levels of review and approval prior to being posted to the general ledger. Manual JE's are processed through the software, but hard copies of all JE's are maintained to ensure documentation of approval. Automated JE's are not reviewed and approved prior to posting since it is an internal process, but back-up documentation can be provided by LVHA and CLV.
  - **Capital Fund projects** are reviewed monthly and reconciled monthly.
  - **Fixed Assets** are identified annually and are posted to the general ledger and depreciated once they have been placed into service by CLV.
  - **Wire Transfers** are conducted to prevent misappropriation of cash and investments. Finance is instructed to wire transfer funds only to accounts in the name of the organization and with the specific account numbers provided. Two levels of review and approval are required by the bank and CLV.
  - **Signature and date line** proof of the preparer and reviewer are provided by each piece of documentation in the internal control chain (e.g., the receipts log, the disbursements journal, check authorizations, and bank reconciliations) have a signature and date line for the preparer and the reviewer by LVHA and CLV.
- **Decreasing Opportunity** - The goal of internal controls is to minimize opportunity for theft, fraud or error. When a regular accounting employee is on vacation, the assumption of these duties by another employee provides a good opportunity to spot inefficiencies or fraud. Financial management is rotated to ensure changing staff and changing reviewers.

Interim Financial Reports

The LVHA provides a monthly budget to actual report to the Governing Body.

The following reports by CLV (except for the operating statement) are typically produced during the audit. On a quarterly basis, the Board receives a condensed version of set of these reports. This allows the Board and Management to be informed of any changes in the financials throughout the year.

- Combined Balance Sheet - Statement of Financial Position.
- Income Statement - Statement of Activities and Changes in Net Assets.
- Notes to the Financial Statements.

The information in these statements can be a useful tool for:

- Monitoring revenue, support, expenses and comparing them to prior periods and budgeted amounts.
- Planning additional programs and services for current or future years.
- Determining if additional cost containment, need for additional funding or budget adjustments are warranted.
- Analyzing the results of a specific program area.

Year End Process & Compliance Plan

An Independent Audit

LVHA is required by HUD and the State of New Mexico to have an annual financial audit by an Independent Certified Public Accountant which is completed via the yearly CLV audit. The audit is an examination of the organizations financial statements to ensure that they are presented fairly in all material respects according to GAAP. An audit involves detailed levels of testing.

Selecting an Auditor
A Request for Proposals (RFP) is be prepared by CLV to solicit bids for accounting services. The RFP should briefly describe the organization, its accounting system, the type of service requested (e.g., audit of basic financial statements, an A-133 audit, preparation of the 990 tax return, a management letter, and a presentation to the board) and the desired timing of the work and delivery of the reports.

After the audit is completed, LVHA is required to submit its financials to the following:

- City of Las Vegas - LVHA is included as a Department – Due December 1st..
- State of New Mexico Auditor – Due December 1st.
- HUD - Audited FASS Submission is due March 30th online and an electronic to the Albuq. local field office
- **HUD** - Unaudited FASS Submission is due August 31st.

Year End Plan
The CLV Finance Department works on a year-end plan that allows staff to be prepared for the Fiscal Year end on June 30th. Detailed explanation is provided in the **Year-end Procedures** but an overview is provided but not limited to the following:

- Year end Processing check list is followed as well as scheduled staff meetings.
- Revenue schedules for the year are reconciled to the General Ledger.
- Expense by fund – A review of all AP and expense accounts to the budget.
- Security and Pet Deposits are reconciled.
- Liability accounts - Reconciled.
- Program and Project Fees are reviewed and closed for the year.
- Capital Fund- Projects, files and reconciliations to the annual Fiscal Year vs. Calendar Year grant.
- Reconcile all grant fiscal year disbursements.
- Interfund accounts are reconciled, bank transfers completed and journal entries processed no later than June 30th.
- Accruals -Vendor accounts audited and obligations to HUD or CLV.
- Pre-payments- Insurance, benefits and lease payments.
- Accounts Payable- year end procedures, verify any open PO's, and invoices, reconcile sub-ledger, etc., to
- Purchasing- Manual audit and review of existing purchase orders and commitments.
- Inventory -manual and G/L audit.
- Work Order- Work in conjunction with the LVHA maintenance department to close out.

The Budget

LVHA Staff prepares the Annual Financial Budget to be presented to the Board no later than June 30th of every year. The development and implementation of the annual financial budget is an integral part to the daily operating success of the agency. It provides comparative monthly reporting to the Board and Executive team. It is completed in collaboration with staff members and departments over a series of meetings throughout the year. It is a roadmap for utilizing resources and meeting the agency goals. It supports LVHA program success and ensures fiscal viability throughout the year.

Every effort is made to combine program, department and agency goals in the budget. Limited resources will be utilized to maximize benefits to the recipients of LVHA programs. The staff incorporates LVHA core values to present accountability, compassion, service, integrity and stewardship in applying the approved budget to each department.

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0075. There is no personal information contained in this application. Information on activities and expenditures of grant funds is public information and is generally available for disclosure. Recipients are responsible for ensuring confidentiality when disclosure is not required. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

1. Definitions

Act - The United Stated Housing Act of 1937 (42 U.S.C. 1437 et., al), as amended.

Annual Contributions Contract (ACC) - This grant agreement between HUD and the HA which establishes the basic terms and conditions for the HA's public housing program.

Consolidated Annual Contributions Contract (consolidated ACC or CACC) - HUD's annual Grant Funding Exhibits to the ACC, which together with the ACC, constitute the annual grant agreement for the HA's public housing program.

Cooperation Agreement - Agreement(s) prescribed by HUD for execution by the HA and the local governing body relative to the cooperation of the local governing body in the development and operation of the project(s) and the obligation of the HA for payments in lieu of taxes (PILOT).

Fiscal Year – The HA fiscal year.

Grant Funding Exhibit - Exhibits to the ACC, in a form prescribed by HUD, reflecting HUD's commitment to provide grant funding that states the amount and term of Operating Fund and Capital Fund grant funding.

Grant Funding Increment - Each annual commitment of Operating Fund and Capital Fund by HUD to the HA for its public housing program.

Housing Agency (HA) – The entity that meets the statutory definition set forth under the Act, and which is subject to the CACC.

HUD - The U.S. Department of Housing and Urban Development.

Mixed-Finance - Development or modernization of public housing units where the public housing units are owned in whole or in party by an entity other than a PHA (i.e., Owner-Entity).

Operating Costs (Operating Expenditures or Operating Expenses) - Costs incurred by the HA for the necessary administration, operation and maintenance of a public housing Project; and which may be charged against operating receipts in accordance with the CACC and HUD requirements. Except as allowed by HUD, such costs do not include: any costs, expenses, expenditures, or charges incurred as part of the development or modernization of a public housing Project; or payment of principal or interest of bonds or notes related to the development or modernization of public housing.

Operating Receipts - All rents, revenues, income, and receipts accruing from, out of, generated by, or in connection with the ownership or operation of public housing, including grant funds received pursuant to HUD Requirements and is not limited to income from fees for services performed, the use or rental of real or personal property acquired with grant funds, the sale of commodities or items fabricated under the grant, license fees and royalties on patents and copyrights, and principal and interest on loans made with grant funds. Operating Receipts shall not include any funds received for the development or modernization of a Project, annual contributions pledged for payment of bonds or notes, or proceeds from the disposition of real property or rebates, credits, discounts and interest earned on any of them.

Interest on the Operating Receipts (including the investment of Operating Receipts), constitutes Operating Receipts.

Operating Reserve Account - An account allowed by HUD for a PHA from amounts by which the maximum payment of grant funds from the Operating Fund formula to the HA under the CACC (during a HA fiscal year) exceeds Operating Costs. This account may be used as the source of additional payments.

Owner Entity - An entity, including the HA, that owns Mixed-finance public housing units.

Project (Public Housing Project) - Low-income housing, developed, acquired, or assisted by HUD under the Act, other than under section 8 of the Act, and the improvement of such housing, and necessary appurtenances thereto. The term shall include all real and personal property, tangible and intangible, which is acquired or held by a HA in connection with a Project covered under the CACC.

Program (Public Housing program) - The HA's public housing program.

Program Receipts - Program receipts shall mean Operating Receipts and any other funds received by the HA for the development, modernization, sale or transfer of public housing projects. Subject to HUD Requirements, as defined in Paragraph 3, interest on the program receipts (including the investment of program receipts) constitutes program receipts. Program receipts shall only be used to pay for public housing program expenditures, unless otherwise allowed by HUD Requirements.

Public Housing - The term shall include public housing projects, as well as all other real and personal property, tangible and intangible, which is acquired, or held by, the HA in connection with its public housing program covered under a CACC.

Replacement Reserve Account – An account established by the HA, as approved by HUD. This account may be used as a source to fund any of the eligible capital activities outlined in its Capital Fund 5 Year Action Plan as approved by HUD under the Act.

2. Mission of HUD and HA.

a. HUD shall administer its Federal public housing program for the provision of decent, safe, and sanitary housing to eligible families in accordance with the CACC and all applicable HUD Requirements. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions, in the form of grants, to the HA in accordance with all applicable statutes, executive orders, regulations, and the CACC.

b. The HA shall use Program Receipts to provide decent, safe, and sanitary housing for eligible families in compliance with the Act and all HUD requirements. HA shall at all times develop and operate public housing projects in a manner that promotes serviceability, economy, efficiency, and stability of the projects, and the economic and social well-being of the tenants.

c. Except as otherwise provide by law the HA shall develop, modernize and operate all Projects covered by the CACC, in accordance with HUD Requirements. The HA shall also ensure compliance with such requirements by any other Owner Entity, contractor or subcontractor engaged in the development or operation of a project covered under the CACC.

3. HUD Requirements.

Except as otherwise provided by law, the HA must comply with the following "HUD Requirements", including all such requirements as amended from time to time:

a. The Act,

b. Regulations at Title 2 of the Code of Federal Regulations, and regulations issued by HUD at Title 24 of the Code of Federal Regulations);

c. Other federal statutes (including appropriations acts), executive orders and regulatory requirements and;

d. HUD-issued notices, and HUD-required forms, or agreements.

4. Cooperation Agreement(s).

During the development and operation of the project(s), the HA shall perform and comply with all applicable provisions of a Cooperation Agreement in the form prescribed by HUD, including the making of PILOT provided therein (or such lesser amount as may be prescribed by State law or agreed to by the local governing body); and shall at all times preserve and enforce its rights thereunder, and shall not terminate or amend the Cooperation Agreement(s) without the written approval of HUD.

5. Declaration of Restrictive Covenants.

a. *Record of Obligation* Upon the acquisition, development, or assistance of any real property with funds covered by the CACC, the HA shall execute and file for record against the Project and/or the owner's leasehold interest an instrument (which may be in the form of a declaration of trust, declaration of restrictive covenant, or such other document as approved or prescribed by HUD), confirming and further evidencing, but not limited to, (1) the obligation of the HA not to convey or encumber the Project except as expressly authorized in the CACC, (2) the obligation of the HA to develop, maintain and operate such Project in compliance with the CACC and HUD Requirements.

1. Such instrument and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The HA shall furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired, assisted, or disposed of (or removed from the public housing program) by the HA in connection with its public housing program, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended. The HA shall furnish HUD with appropriate evidence of such recording or filing.

b. *Mixed-Financed Projects.* The HA shall require the Owner Entity to execute and file for record against the Project, prior to the recordation of any other encumbrance, a declaration in the form approved by HUD.

1. The declaration shall confirm and evidence the Owner Entity's obligation, during the term of CACC covering the Project units and during such further period when such approval may be required by law as then in effect, to develop, maintain and operate the Project Units in compliance with the HUD Requirements. Such declaration and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The declaration shall provide further that it may not be modified, amended or released without the prior written approval of HUD. The HA shall furnish HUD with appropriate evidence of such recording or filing.

6. Disposition and Encumbrances.

a. *Covenant Against Disposition and Encumbrances.* The HA shall not demolish or dispose of any project, or portion thereof, other than in accordance with the terms of the CACC and applicable HUD Requirements. With the exception of entering into dwelling leases with eligible families for dwelling units in the Projects covered by the CACC, and normal uses associated with the operation of the Project(s), the HA shall not in any way encumber any project, or portion thereof, without the prior written approval of HUD. In addition, unless approved in advance and in writing by HUD, the HA shall not pledge as collateral for a loan the assets of any Project covered under the CACC.

b. *Mixed-Finance Projects.* No transfer, conveyance, or assignment shall be made without the prior written approval of HUD of: (i) any interest of a managing member, general partner,

or controlling stockholder (any such interest being referred to as a "Controlling Interest") of the Owner Entity; or (ii) a Controlling Interest in any entity which has a Controlling Interest in the Owner Entity; or (iii) prior to the payment in full of all equity contributions described in the approved evidentiary documents, any other interest in the Owner Entity, or in any partner or member thereof.

1. Notwithstanding the foregoing, HUD consent is not required where a business organization that has a limited interest (non-controlling and non-managing) in the Owner Entity transfers a non-controlling and non-managing interest in the business organization provided that the Owner Entity: (i) provides HUD with written notice of such transfer; and (ii) certifies to HUD that the new owner of the limited interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner Entity.

2. HUD will not unreasonably withhold, delay, or condition a request by the Owner Entity for HUD's consent to an internal reorganization of the corporate or partnership structure of the Owner Entity or any of the partners, members or stockholders of the Owner Entity.

3. Notwithstanding the foregoing, the prior approval of HUD and the HA will not be required for the exercise by any investor partner of the Owner Entity ("Investor") of its right pursuant to the Amended and Restated Limited Partnership Agreement of the Owner Entity ("Partnership Agreement") to remove the general partner of the Owner Entity and appoint the Investor or its Affiliate (i.e., any entity which directly or indirectly controls, or is controlled by, or is under common control with, the specified entity) as an interim general partner of the Owner Entity so long as the Investor gives prompt written notice to HUD of such removal and appointment ("Removal Notice"); provided that HUD and the HA consent will be required for the appointment of such interim general partner to extend beyond a ninety (90) day period and for the appointment of any entity (including the Investor of an affiliate thereof) as the permanent replacement general partner. Such 90-day period will commence on the date of the Removal Notice ("Interim Replacement Period"). With the prior written approval of HUD and the HA, the Interim Replacement Period may be extended for an additional 90 days to allow the substitute general partner of the Owner Entity to find a replacement general partner acceptable to HUD and all other parties, provided that prior to the expiration of such additional 90-day period, the substitute general partner demonstrates that the Investor is continuing to fund (or has already funded) capital as required under the Partnership Agreement and that the Project continues to be operated in a manner consistent with HUD Requirements.

4. The consent of HUD and the HA will not be required for (i) any exercise by the Investor of its right to require the repurchase of its limited partnership interests as against the General Partner, any guarantor, and/or any affiliate thereof ("Repurchaser") pursuant to the Partnership Agreement, provided that the Investor provides prompt written notice to HUD and the HA at the time of its exercise of such right, and further provided that any resale of the limited partnership interests by the Repurchaser will be subject to the approval of HUD and the HA, such approval not to be unreasonably withheld, delayed or conditioned, or (ii) the exercise by the HA (or any approved Affiliate thereof) of its rights to acquire interests or the Property pursuant to the Right of First Refusal and Purchase Option Agreement of approximately even date herewith.

7. Insurance Requirements.

a. Except as otherwise provided by HUD, and in accordance with the CACC and HUD regulations and requirements, the HA shall procure adequate insurance to protect the HA from financial loss resulting from various hazards.

b. *Mandatory Insurance Coverage.* The following types of insurance are required:

1. Commercial Property. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.

2. Commercial General Liability.

3. Workers Compensation and Employers Liability.

4. Owned and Non-Owned Automobile Liability.

5. Theft, Disappearance, and Destruction, only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.

6. Employee Dishonesty.

7. Boiler and Machinery if steam boilers have been installed.

8. Flood Insurance for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.

9. Lead-Based Paint Liability for HAs undergoing lead-based paint testing and abatement.

10. Fidelity Bond Coverage. The HA must carry adequate fidelity bond coverage, as required by HUD, of its officers, agents, or employees handling cash or authorized to sign checks.

c. *Optional Insurance Coverage.* The following insurance coverage are recommended and should be purchased if the HA determines that exposure exists:

1. Boiler and Machinery coverage is recommended if there is extensive central air conditioning, electrical transformers, or similar equipment.

2. Directors and Officers or Public Officials Liability.

3. Law Enforcement Liability: highly recommended where the exposure exists, and the Commercial General Liability insurer has excluded coverage.

d. *Authorized Insurance Companies.* Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

e. *Certificates of Insurance.* At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

f. *Waivers and Self-Insurance Funds.* Requests for waivers of this section not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted in writing to HUD for approval with a justification as to why the request should be approved.

g *Restoration.* The HA shall, to the extent that insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a Project, in accordance with all HUD Requirements, except with the written approval of HUD to the contrary.

h. *Mixed Finance Projects.* The HA, to the extent that insurance proceeds or condemnation award proceeds ("Proceeds") permit, shall promptly cause the restoration, reconstruction, and/or repair ("Restoration") of any damaged or destroyed property of the Project. The obligation for Restoration, to the extent Proceeds and other funds (if any are made available by the Owner Entity or the HA) permit, is a requirement with which the Owner Entity must comply to the extent Restoration is feasible. Each mortgagee must permit Restoration if feasible (rather than require application of Proceeds to reduction of debt). If Restoration is not feasible, then the following requirements, which shall be incorporated into the Regulatory and Operating Agreement (or other such agreement) between the HA and the Owner Entity (and ground lease, if applicable), and with which all mortgage documents encumbering the Project shall be consistent, shall apply:

1. *Partial loss.* In the event that less than all of the dwelling units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) If the Proceeds are less than, or equal to, the sum of the existing outstanding mortgage debt secured by the Project, excluding any such debt held by the HA to secure a loan of Capital Funds, other public housing development funds, or Program Receipts for the Project ("Existing Mortgages"), and such Proceeds are applied to reduction of Existing Mortgages, the number of Project units in the Project shall remain the number required immediately prior to the occurrence of the casualty or condemnation.

(B) If the Proceeds are less than, or equal to, the sum of the Existing Mortgages but, at the election of the holders of the Existing Mortgages, are distributed among the holders thereof and the Authority, by application first to reduction of the Existing Mortgages in an aggregate amount not to exceed the proportion of the Proceeds equal to the ratio of non-Project units to all dwelling units in the Project, and then by payment to the HA of the balance of the Proceeds; then the percentage of units in the Project (and the percentage of bedrooms contained therein) which shall be Project units shall remain the same as required immediately prior to the casualty or condemnation.

(C) If the Proceeds are more than sufficient to pay off the Existing Mortgages, Proceeds in excess of the aggregate amount of the Existing Mortgages shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for a loan of Capital Funds, other public housing development funds, or Program Receipts;

(ii). To reimburse the HA for any Development Grant Funds, Capital Funds or HOPE VI Grant Funds disbursed to the Owner Entity for development of the Development other than by loan;

(iii). To the HA an amount equal to the total "cost of construction" attributable to the Project units, less the sum of (a) and (b) above; and

(iv). To the Owner Entity.

(D) Following application of Proceeds in accordance with this subparagraph the percentage of dwelling units in the Project which shall be Project units (and the percentage of bedrooms contained therein) shall remain the same as required immediately prior to the casualty or condemnation; provided, however, that to the extent that the payment to the HA pursuant to clauses (A), (B), and (C) shall be less than the "cost of construction" attributable to the Project units, the number of remaining units in the Development which shall be Project units shall be increased by a number of units (rounded down) equal to (1) the amount by which such payments to the HA shall be less than the cost of construction, divided by (2) the quotient of (x) cost of construction, divided by (y) the number of Project units immediately prior to the occurrence of the casualty or condemnation.

2. *Total loss.* In the event that all of the units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) The Proceeds shall be used to reduce the amount of the outstanding indebtedness of any mortgage(s) secured by the Project, including any mortgage(s) held by the HA, based on the priority recorded order of such mortgage(s);

(B) If the Proceeds are more than sufficient to pay off the amount of the outstanding indebtedness of all mortgage(s) secured by the Project, including any mortgage(s) held by the HA, then the amount of the Proceeds in excess of such indebtedness shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for an unsecured loan of Capital Funds, or other HUD Development Funds or Program Receipts;

(ii). To reimburse the HA for any Capital Funds, other public housing funds or Program Receipts disbursed to the Owner Entity for development of the Project other than by loan;

(iii). To the HA an amount equal to the total "cost of construction" attributable to the Project units, less the sum of (a) and (b) above, and

(iv). To the Owner Entity;

For the purposes of this subsection, the term "cost of construction" shall mean the total cost of developing the Project, less land acquisition costs, if any, and non-capitalized soft costs.

8. Employer Requirements.

The HA shall comply with all State and Federal laws applicable to employee benefit plans and other conditions of employment. No Program Receipts may be used to pay any compensation for the services of members of the HA Board of Commissioners. None of the funds made available by the Act, for purposes authorized under section 8 and section 9 of the Act may be used by the HA for any amount of salary, including bonuses, for the chief executive officer of which, or any other official or employee of which, that exceeds the annual rate of basic pay payable for a position at level IV of the Executive Schedule.

9. Accounts, Records, and Government Access.

a. The HA shall maintain complete and accurate books of account for the Projects of the HA in such a manner as to permit the preparation of statements and reports in accordance with HUD Requirements, and to permit timely and effective audit.

b. The HA shall furnish HUD such financial and program data, reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data as required by HUD. The HA is required to submit or access HUD's system of records (SORN). HUD's SORN is subject to the Privacy Act, the Freedom of Information Act, and other such applicable law. The HA must not release, without prior HUD approval, any and all information contained in such records.

c. The United States Government, including HUD and the Comptroller General, and its duly authorized representatives, shall have full and free access to all HA offices and facilities, and to all books, documents, and records of the HA relevant to the administration of the projects under this CACC, including the right to audit and make copies.

d. The HA shall engage and pay an independent public accountant to conduct audits that are required by HUD and HUD Requirements. The cost of audits required by HUD may be charged against program receipts.

e. The foregoing (a)-(d) shall apply to any records and/or any facilities operated or maintained by an agent or independent contractor for the HA that assists in fulfilling any obligation under this CACC. Any such agent or independent contractor that denies HUD or its duly authorized representatives from reviewing records, or denies HUD or its duly authorized representative entry to an office or facility, or prevents access to any office or facility, will be considered a denial made by the PHA.

10. Grant Funding

a. HUD shall make annual contributions in the form of grant funding in the amounts provided for the Public Housing Program as stated in the grant funding exhibits.

b. Grant funding is subject to each year's annual appropriations act and the requirements will be set forth in the grant funding exhibits. Appropriations may be reduced by HUD as directed by the Congress in an appropriations act. Grant funding may be reduced by an offset of a HA's funding, pursuant to a formula prescribed by Congress in an appropriations act. Grant funding may also be reduced or offset pursuant to a formula devised by HUD if Congress has invested HUD with the discretion to devise and implement a funding formula in the appropriations act. Grant funding may also be terminated, recaptured, withheld, suspended, reduced or such other actions taken in accordance with HUD Requirements.

c. Grant funding is calculated by applying applicable regulations in Title 24 of the Code of Federal Regulations unless Congress provides otherwise. HUD will grant funding to the HA in accordance with HUD Requirements, unless modified by an appropriations act. The appropriations act, not the Title 24 of the Code of Federal Regulations, will always take precedence in formulating each year's grant funding. Each year's grant funding exhibits will set forth the requirements. Any change in funding or requirements to a grant funding exhibit will be provided in a written notice to the HA.

d. The HUD notice of a revised funding exhibit(s) constitutes an amendment of the CACC.

11. Term

The grant funding exhibits state the first date and last dates of the terms for each funding increment.

12. Depository

a. The HA shall deposit and invest program receipts and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of the projects under a CACC with HUD in accordance with the terms of the General Depository Agreement(s) and all investment requirements provided in HUD and Treasury Notices and Regulations. The General Depository Agreement shall be in the form prescribed by HUD and must be executed by the HA and the depository. Immediately upon the execution of any General Depository Agreement, the HA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A General Depository Agreement shall not be terminated except after 30 days notice to HUD.

b. The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with HUD Requirements. The HA may only use Program Receipts for: (1) the payment of the costs of development and operation of the Projects under the CACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Except as approved by HUD, and consistent with HUD Requirements, grant funds are not fungible.

13. Termination of a Project. If any Project covered by this ACC is terminated, all related Program Receipts shall, in accordance with the terms of this CACC and HUD Requirements, become part of another Project administered by the HA. If no public housing Project(s) exists, the remaining personal and real property, and program receipts, shall be distributed (including the possible remittance to HUD) as directed by HUD, consistent with HUD Requirements.

14. Notices, Defaults, Remedies.

a. Any notice required or permitted to be given under this ACC or CACC shall be in writing, signed by a duly authorized official, and addressed, if to the HA, to the principal office of the HA, and if to HUD, to the HUD office with jurisdiction over the HA, unless otherwise directed by regulation or other HUD Requirements.

b. Upon the occurrence of a substantial default by the HA, as determined by HUD, HUD shall be entitled to any or all of the remedies set forth below. A substantial default is a serious and material violation of any one or more of the covenants contained in the CACC. Events of substantial default shall include, but shall not be limited to, any of the following occurrences: (1) failure to maintain and operate the Project(s) under this ACC in a decent, safe, and sanitary manner; (2) the disposition or encumbrance of any Project or portion thereof without HUD approval; (3) failure of the HA to comply with any civil rights requirements applicable to the HA and the Project(s); (4) abandonment of any Project by the HA, or if the powers of the HA to operate the public housing program in accordance with the provisions of this ACC are curtailed or limited to an extent that will prevent the accomplishment of the objectives of this ACC; (5) failure to carry out modernization or development in a timely, efficient and effective

manner; and (6) termination of tax exemption (either real or personal property) on behalf of a Project covered under the CACC.

c. Delivery of a notice of substantial default shall be required before the exercise of any remedy permitted under this ACC. Such notice shall: (1) identify the specific covenants, statutes, executive orders, or regulations alleged to have been violated; (2) identify the specific events, actions, failure to act, or conditions that constitute the alleged substantial default; and (3) provide a specific timeframe for the HA to cure the substantial default, taking into consideration the nature of the default.

d. Except in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, the HA shall have the right to appeal any such notice received from the HUD office with jurisdiction over the HA. Such informal appeals shall be in writing and shall be submitted within ten (10) working days from the date of the HA's receipt of such notice. Appeals of the action of a HUD Office shall be made to the Assistant Secretary for Public and Indian Housing, or such other official as shall be a successor thereto.

e. Upon the occurrence of a substantial default, or the expiration of any applicable cure period provided by HUD, the HA shall: (1) convey to HUD title to the Project(s) as demanded by HUD if, in the determination of HUD (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) deliver possession and control of the Project(s) to HUD.

f. Nothing contained in this ACC shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under this ACC or CACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

g. If HUD shall acquire title to, or possession of the Project(s), HUD shall re-convey or redeliver possession of the project(s) to the HA, or to any successor recognized by HUD: (1) upon a determination by HUD that the substantial default has been cured and that the Project(s) will thereafter be operated in accordance with the terms of the CACC; or (2) after the termination of HUD's obligation to make payments, unless there are any obligations or covenants of the HA to HUD that are then in default.

h. HUD may at any time by notice to the HA declare this ACC or the CACC terminated with respect to any project if:

1. The HA has made any fraudulent or willful misrepresentation of any material fact in any document or data submitted to HUD as a basis for the CACC or as an inducement to HUD to enter into the CACC; or

2. a substantial default exists in connection with any of the Projects.

i *Mixed Finance Projects.* In addition to the above the following shall apply to Mixed-Finance Projects.

1. Each of the following shall also constitute an event of substantial default under the CACC:

(A) The drawdown of Capital Funds, Development Grant Funds, or other public housing funds, as applicable, under a Mixed Finance proposal in amounts greater than authorized, or in amounts greater than allowed by HUD Requirements;

(B) Breach of any approved performance schedule; or

(C) Serious and material breach of any terms, covenants, agreements, provisions, or warranties of:

(i). the HA which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, or other participating parties, Amendment; and

(ii). the Owner Entity, partner, or other participating party, made in any agreement submitted to HUD as part of the evidentiary materials which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, partner, or other participating parties.

2. HUD shall permit an Owner Entity, partner, or lender to participate, and may in its discretion, permit any other participating party to participate, in any appeal from a notice of substantial default delivered by HUD to the HA pursuant to this ACC with respect to a Project.

3. During the term of any agreement between the HA and Owner Entity, and so long as the Owner Entity shall not be in default of its obligations thereunder, HUD agrees that in the event of the substantial default by the HA under the CACC, HUD shall exercise any remedies or sanctions authorized under the CACC, including taking possession of the HA's interest in the Mixed Finance Project, in such manner as not to disturb the Owner Entity's rights under any such agreements.

4. Any rights of the mortgagee under a Note and First Mortgage (if any), including the right to exercise all remedies specified therein, shall not be subordinate to any other obligations imposed upon the Project, except as such obligations (1) shall be reflected in the Declaration of Restrictive Covenants, as required by the CACC, or a memorandum of lease (if applicable), and/or any other recorded instrument which shall have been recorded prior to the lien of the First Mortgage, or (2) shall be the subject of a subordination agreement with such mortgagee.

15. HUD in Possession of Project(s).

a. During any Period in which HUD holds title to or possession of the projects after a substantial default by the HA, HUD shall develop and/or operate such project(s) as nearly as practicable in accordance with the provisions of the CACC.

b. During any such period, HUD may, in the name and on behalf of the HA, or in its own name and on its own behalf (as HUD shall solely determine), exercise any and all rights of the HA under the CACC, and perform any and all obligations of the HA under the CACC. Nothing herein shall be deemed to make the action(s) or omission(s) of the HA attributable to HUD.

16. Conflict of Interest.

a. HAs shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts for which program receipts will be or are expended. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The HA's procedures must avoid acquisition of unnecessary or duplicative items. The HA must disclose in writing any potential conflict of interest to HUD.

b. The HA, its contractors and subcontractors shall not enter into any contract, subcontract, or arrangement in connection with a project under the CACC in which any of the following classes of people has an interest, direct

or indirect, during his or her tenure or for one year thereafter:

1. Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a business entity.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the Project(s), or any member of the employee's immediate family, or the employee's partner.

3. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

4. Any member of these classes of persons must disclose the member's interest or prospective interest to the HA.

5. The requirements of this subsection may be waived by HUD for good cause, if the prohibited contract, subcontract or arrangement is otherwise permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract, subcontract or arrangement to which the waiver pertains.

6. The provisions of this subsection (b) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

c. The HA shall not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

1. Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who does not occupy a policymaking position with the HA.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the project(s).

3. Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

d. The prohibition referred to in subsection (c) shall remain in effect throughout the class member's tenure and for one year thereafter.

e. A class member shall disclose to the HA the member's familial relationship to the prospective employee.

f. For purposes of this section, the term "immediate family member" means: the spouse, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, or sister-in-law, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g., a half-brother or stepchild).

g. In addition to any other applicable conflict of interest requirements, including those provided herein, HAs must also maintain written standards of conduct covering conflicts of interest and governing the performance of its Board Member, executives, and employees engaged in the administration and operation of Projects covered by the CACC.

1. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from residents residing in Projects or participating in programs covered by the CACC. However, HAs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

2. If the HA has a parent, affiliate, or subsidiary organization that is not a state or local government, the HA must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the HA is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization; or in administering or operating a project involving a related organization.

h. Consistent with this section and HUD Requirements, the HA shall ensure that tenants served directly by the HA serve on the governing body of the HA.

17. Civil Rights Requirements.

a. The HA shall comply with all statutory, regulatory, and executive order requirements pertaining to civil rights, equal opportunity, and nondiscrimination, as those requirements now exist, or as they may be enacted, promulgated, or amended from time to time. These requirements include, but shall not be limited to, compliance with at least the following authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601-3619; 24 CFR part 100); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 24 CFR part 8); (the Age Discrimination Act of 1975 (42 U.S.C. 6101¬6107; 24 CFR part 146); the Americans with Disabilities Act (Pub. L. 101-336, approved July 26, 1990; 28 CFR part 35); Executive Order 11063 on Equal Opportunity in Housing (24 CFR part 107); Executive Order 11246 on Equal Employment Opportunity, as amended by Executive Order 11375 (41 CFR part 60); and Executive Order 12892 on Affirmatively Furthering Fair Housing.

b. In connection with the development or operation of any Project, the HA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The HA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, 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 HA shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its contracts in connection with the development or operation of any Project, except contracts for standard commercial supplies or raw materials and contracts referred to in subsection (C) of this section, and shall require all contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The HA shall post at the Projects, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

c. The HA shall incorporate the language required by Executive Order 11246, codified at 41 CFR §60-1.4(b) (or any successor provision), into any contract for construction work, or any modification thereof, which is paid for in whole or in part with funds obtained under this ACC. In addition, the HA agrees that it will be bound by the equal employment opportunity provisions set forth at 41 CFR §60-1.4(b) (or any successor provision) with respect to its own employment practices when it uses its own staff (force account) to carry out Federally assisted construction work.

18. Members or Delegates to Congress.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term "resident commissioner" refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)

19. Rights of Third Parties.

Nothing in this ACC shall be construed as creating any right of any third party to enforce any provision of the ACC, the CACC, or to assert any claim against HUD or the HA.

20. Waiver or Amendment.

Any right or remedy that HUD may have under this ACC may be waived in writing by HUD without the execution of a new or supplemental agreement, or by mutual agreement of the parties to this ACC. This agreement may be amended in writing: Provided, that none of the provisions of this ACC may be modified or amended so as to impair HUD's obligation to pay any annual contributions that have been pledged as security for any obligations of the HA.