

**REGULAR MEETING OF THE CITY COMMISSION  
MONDAY, MAY 23, 2016 @ 5:30 P.M.  
CITY COMMISSION CHAMBERS, 214 S. LOVE STREET**

**Call to Order:** The meeting was called to order by Mayor Campos at 5:30 p.m.

**Present and answering roll call:** Commissioner Gandy, Commissioner Trujillo, Commissioner Sanchez, Commissioner Butcher, and Mayor Campos

**Also Present:** City Attorney Patrick McMahon, Chief of Police David Rodriguez, City Clerk Carol Ann Hogue, Finance Director Gary Chapman, Planning and Zoning Coordinator Ball and Administrative Assistant Anna Juarez

**Invocation:** Commissioner Gandy gave the invocation.

**Pledge of Allegiance:** Commissioner Gandy led the pledge.

**Approval of Agenda:** Mayor Campos called for a motion. Commissioner Trujillo so moved to approve the agenda; Commissioner Butcher seconded. Motion carried unanimously.

**Approval of the Regular Meeting Minutes of May 9, 2016:** Mayor Campos called for a motion. Commissioner Trujillo so moved to approve the regular meeting minutes of May 9, 2016; Commissioner Gandy seconded. Motion carried unanimously.

**COMMISSIONER AND STAFF REPORTS:**

- Finance Director Chapman informed Commissioners of non-action item of discussion of Parks and Recreation board appointment of Marla Price term ending in June of 2016. Also, Sarbrina Autman representing Tyler Technology will be at City Hall for the next month teaching us how to use Incode software.

**NON-ACTION ITEMS:**

**Discussion of Parks and Recreation Board Appointment:** Finance Director Chapman informed Commissioners of expiring term of Marla Price on the Parks and Recreation board. Marla Price stated she would like to remain on the board and she is also an ETZ member. Discussion only, no action was taken.

**ACTION ITEMS:**

**Consider Resolution 2016-36: City Employee Retiree Healthcare Plan:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Resolution 2016-36: City Employee Retiree Healthcare Plan; Commissioner Butcher seconded. Mayor Campos stated commission will need to make a motion to entertain one of the options. Commissioner Trujillo rescind motion to open up floor to discussion of the five options

for consideration; Commissioner Butcher seconded. Mayor Campos read the five options:

- Option 1: 85% of Current Plan for Age/Service and NMRHCA
- Option 2: 85% of Medicare Supplement for Age/Service and NMRHCA
- Option 3: 50% of Current Plan for Age/Service and NMRCHA
- Option 4: 50% of Medicare Supplement for Age/Service and NMRHCA
- Option 5: No retiree healthcare due to current economic conditions and the expenditure would have to be funded through reserves.

Commissioner Butcher stated he is for option #1 excellent plan; it is a great incentive for the employees of the City. Commissioner Sanchez stated none of these, but would favor an option for retiree to choose what he/she wants when he/she retires. Finance Director Chapman stated in the Medicare option the City is not only providing Medicare for the older retirees, the City is also given the option for the NMRHCA; current cost of \$146, 000 a year with a projection increase of \$172,000 a year in a 5 year time frame; cost is related to younger employees cost that would be participating in the NMRHCA. Commissioner Gandy stated he is for option #5 due to the current situation, even though City has some valued employees; the cost continues to go up and there is no way to recoup the money with increase of inflation. Commissioners and Finance Director Chapman discussed schools retirement benefits, employee contributions to Medicare, initial cost for rehiring an employee, and decline in GRT. Finance Director Chapman stated City Manager Williams decision was option #5 as recommended in the staff report. Mayor Campos stated he did not like the timing and is against dipping into the reserves because of resolution. According to survey the employees are in favor but the public is not. Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Resolution 2016-36: City Employee Retiree Healthcare Plan Option #5; Commissioner Gandy seconded. There being no further discussion, Mayor Campos called for a roll call vote; Commissioner Gandy – Yes, Commissioner Trujillo – Yes, Commissioner Butcher – No, Commissioner Sanchez – Yes and Mayor Campos - Yes. Motion carried unanimously; Option #5: No retiree healthcare due to current economic conditions and the expenditure would have to be funded through reserves.

**Consider Resolution 2016-37: Amendment of City Fund Balance Reserve Policy:** City Attorney McMahon suggested based on the motion from the first action item for motion to vote “no” to keep everything clear. Mayor Campos called for a motion. Commissioner Trujillo so moved consider Resolution 2016-37: Amendment of City Fund Balance Reserve Policy to acknowledge a vote “No”; Commissioner Sanchez seconded. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Resolution 2016-38: Approval of 2016 – 2017 Interim Budget:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Resolution 2016-38: Approval of 2016 – 2017 Interim Budget; Commissioner Butcher seconded. Finance Director Chapman stated this is the same budget presented in the April Meeting with no changes; keeping cash reserves at 40% for the general fund and 25% for the enterprise

funds. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Resolution 2016-39: Agreement between City and After School Adventures for Summer Adventures Program:** Mayor Campos called for a motion. Commissioner Gandy so moved to approve Resolution 2016-39: Agreement between City and After School Adventures for Summer Adventures Program; Commissioner Butcher seconded. Finance Director Chapman informed Commissioners of this program is a partnership between the City, After School Adventures, Lovington Schools, Nor-Lea Hospital and the J.F. Maddox Foundation. The City did receive a grant from the J.F. Maddox Foundation for this program. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Resolution to approve the publishing and advertisement of an Ordinance to cause a zoning change from Zone D- Industrial to Zone C – Commercial for County Fair Addition, Blocks 5, 6, 7, and 8:** Mayor Campos called for a motion. Commissioner Butcher so moved to approve Resolution 2016-40 to approve the publishing and advertisement of an Ordinance to cause a zoning change from Zone D – Industrial to Zone C – Commercial for County Fair Addition, Blocks 5, 6, 7, and 8; Commissioner Trujillo seconded. Planning and Zoning Coordinator Ball informed Commissioners of Planning and Zoning recommended approval; this particular area was Commercial at one time. Planning and Zoning Coordinator Ball stated change of zoning will follow City's Comprehensive Plan; no objections during the Planning and Zoning Meeting. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Resolution for Variance at 1828 N. 3<sup>rd</sup> Street for RV Park site requirements for structures within fifteen feet of an RV pad:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider resolution for variance at 1828 N. 3<sup>rd</sup> Street for RV Park site requirements for structures within fifteen feet of an RV pad; Commissioner Sanchez seconded. Planning and Zoning Coordinator Ball informed Commissioners of denial from Planning and Zoning Board because codes requires fifteen foot between an RV and any structure and for fire and safety reasons. Troy Chun, RV Park owner, stated the structure is 16x8, weather proof with panels, with AC/heating, and with a 4' open air porch; structure is used for kids to play and storage. Mayor Campos asked Planning and Zoning Coordinator Ball for any ideas to be in compliance; Planning and Zoning Coordinator Ball responded structure being moved to the adjacent lot would be the only way to be in compliance and ordinance has been in place since 1970's. Planning and Zoning Coordinator Ball explained slide out and extensions does not include structure; the extensions of RV's are the rollout patio or slide outs or mechanical pieces of an RV that actually slide out from the interior of RV. There being no further discussion, Mayor Campos called for a roll call vote; Commissioner Gandy – No, Commissioner Sanchez – No, Commissioner Butcher – No, Commissioner Trujillo – No and Mayor Campos - No. Motion did not carry.

**Consider Resolution for Variance at 500 E. Adams Drive for mobile home lot dimensions:** Mayor Campos called for a motion. Commissioner Trujillo so moved to approve resolution for variance at 500 E. Adams Drive for mobile home lot dimensions; Commissioner Gandy seconded. Planning and Zoning Coordinator Ball stated property is of appropriate size to allow for the placement of a mobile home; however, placement of a mobile home can still meet yard setback requirements. Planning and Zoning Coordinator Ball stated variance will remove the restriction of dimensions of lot size and the mobile home will not impair the vision around that corner; area is zoned B. Commissioner Trujillo amended motion to include Resolution 2016-41 for variance at 500 E. Adams Drive for mobile home lot dimensions; Commissioner Gandy seconded. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Resolution for variance for Lots 1-24, Sunrise Addition for 21' front yard setback and 5' rear yard setback:** Mayor Campos called for a motion. Commissioner Gandy so moved to approve resolution 2016-42 for Lots 1-24, Sunrise Addition for 21' front yard setback and 5' rear yard setback; Commissioner Trujillo seconded. Planning and Zoning Coordinator Ball stated developers have a new construction company to construct new homes and in order to have a variety of homes for customers to choose from the lots, developers are requesting variance that will allow for a minimum of a 21' front yard setback and a minimum of 5' rear yard setback. David Gallegos with Ramirez and Son's, explained to Commissioners his reasons for variance request. Commissioner Gandy stated concerns with property owners not having enough space for parking 4 to 6 vehicles on the street; Mr. Gallegos responded this issue will be addressed with building a 2 car garage and/or increasing size of garage with the 5' setback. Planning and Zoning Coordinator Ball stated Planning and Zoning Commission did recommend approval contingent upon covenants stating that accessory buildings are not allowed if setback and distance requirements per City code are not met. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Approval of Accounts Payable:** Mayor Campos called for a motion. Commissioner Sanchez so moved to approve the accounts payable; Commissioner Gandy second. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**PUBLIC COMMENT:**

Joel Gomez and Kinney Kim asked Commissioners for permission to host an annual festival in memory of former Lovington resident Shaun Sanchez, who recently died, to help his children. Commissioners advised Mr. Gomez and Kim to follow up with City Manager Williams next week.

Finance Director Chapman informed Commissioners of results from survey to ban bags; 384 responses – 52% said “no” to ban.

**ADJOURNMENT:** There being no further business, Mayor Campos adjourned, the meeting at 6:22 p.m.

**APPROVED:** \_\_\_\_\_  
**PAUL CAMPOS, MAYOR**

**ATTEST:** \_\_\_\_\_  
**CAROL ANN HOGUE, CITY CLERK**

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Nor Lea Hospital Wellness Center  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 7, 2016

**STAFF SUMMARY:**

David Shaw, CEO of Nor Lea Hospital, will present the design options chosen for the Health and Wellness Center the Hospital, City, School and County are partnering on.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

**RECOMMENDATION:**

Discussion only.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Weed Ordinance Discussion  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 3, 2016

**STAFF SUMMARY:**

Staff desire to discuss the current weed control code being utilized by the City and suggested changes.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Lovington Municipal Code 8.16.130 - 150

**RECOMMENDATION:**

Discussion and direction to staff

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

[Print](#)

## Lovington, NM Code of Ordinances

### **8.16.130 Property owner responsible for weed and grass control.**

Any owner, lessee or occupant or agent, servant, representative or employee of an owner, lessee or occupant having control of any lot within the city who shall allow or maintain on any such lot any growth of weeds or grass to a height of over ten inches shall be deemed maintaining a nuisance. This includes the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, the area of any curbs or sidewalks located on the property, and the area located ten feet outside the property line where there is no curb. (Ord. 505, 2012; Ord. 342 (part), 1987: prior code § 4-5-25)

### **8.16.131 Notice to owner, lessee or occupant.**

If the provisions of Section 8.16.130 are not complied with, the City Manager or his or her authorized representative, shall notify the owner, lessee or occupant, or person having charge or control of any occupied or unoccupied lot or tract of land, of the non-compliance with the provisions of this chapter by the issuance of a ten-day written warning. In the event such owner, lessee or occupant, or any person having charge or control of such lot or tract of land, cannot be determined or the owner shall be a nonresident of the city, such notice may be served by posting a copy of the written notice upon the premises, with a copy mailed by certified letter to the last known address of the owner. A citation of citations may be issued for violations remaining after the expiration of the warning of the period. (Ord. 505, 2012)

### **8.16.132 Removal of weeds or grass by city—Lien.**

In those cases where the owner, lessee or occupant, or person having charge or control of any occupied or unoccupied lot or tract of land, is a nonresident of the city or cannot be determined, and compliance in its entirety with the provisions set forth in the notice has not occurred within ten days, the City Manager may cause such weeds or grass to be cut. Lots or tracts of land having been either tractor or manually push-mowed shall have all weeds or grass exceeding the applicable ordinance height shredded during the mowing process. Any weeds or grass that are not sufficiently shredded during the mowing process will be removed, preventing any harborage for insects and rodents and preventing any of the weeds or grass from becoming windblown or creating a fire or traffic hazard. If the owner, lessee or occupant, or a person having charge or control of any such lot or tract of land, is notified in writing as provided and fails to comply with the provisions of this chapter in its entirety with ten days, the City Manager may cause such weeds or grass to be cut and/or the cuttings or any accumulation of weeds or grass removed. In any event, should it appear to be a matter of public necessity for health or safety reasons, the City Manager may give notice that the weeds or grass must be cut or removed immediately, in which event, should there be noncompliance, the City Manager is authorized to cause such weeds or grass to be cut and/or the cutting or any accumulation of weeds or grass removed immediately. The

actual cost of the cutting or removal of weeds or grass, plus any other penalties or costs allowed by law in connection therewith, under any of the circumstances herein set out, shall be billed to the owner of record, who shall have fifteen days to submit payment in full. Failure to remit shall cause a lien to be placed upon the property from which such weeds or grass were removed in the manner prescribed by law. (Ord. 505, 2012)

#### **8.16.133 Approved methods of weed control.**

The approved methods of controlling weeds shall be mowing, cutting, digging, chemical treatment or other methods designed to remove the weeds but not disturb other vegetation or unnecessarily disturb the soil. The scraping and tillage of lots and tracts of land is prohibited, unless permission of the City Manager is first obtained; except that scraping and tillage as part of normal construction activities or as ground preparation for agriculture or landscaping activities shall be allowed. The City Manager may allow scraping and tillage of lots or tracts of land when this will not detract or violate the clear intent and purpose of this chapter. (Ord. 505, 2012)

#### **8.16.140 Littering prohibited.**

No person shall throw or permit to remain or deposit litter, garbage, refuse, manure, wastewater, slops or other unsightly or unwholesome things in or upon any street, sidewalk, alley, parking lot or other public place within the city except in public receptacles, in authorized private receptacles for collection, or in official city dumps. (Ord. 342 (part), 1987: prior code § 4-5-6)

#### **8.16.150 Gutters and sidewalks— Responsibility of merchants.**

A. No person shall sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter or accumulated dirt from any building or lot or from any public or private sidewalk or driveway.

B. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter and accumulated dirt.

C. No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot or from any public or private sidewalk or driveway.

D. Persons owning or occupying places of business within the city shall keep the sidewalks in front of, or adjacent to, their premises, including public and private parking lots, free of litter. If the amount of litter in such areas amount to a nuisance due to odors or eyesore characteristics, the designated representative of the city manager shall notify the person in charge to provide adequate approved litter receptacles located so as to be convenient to the patrons of the place of business and/or to parking areas. The person in charge of the business shall be responsible for emptying the containers as often as is necessary to prevent their becoming a nuisance. (Ord. 342(part), 1987: prior code §§ 4-5-7, 4-5-8)

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Approval of Ordinance No. 543: 2016 UTO Amendments  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** May 26, 2016

**STAFF SUMMARY:**

Ordinance No 543 will adopt the 2016 Uniform Traffic Ordinance amendments by reference. Changes will affect off-highway motor vehicle on streets and highways.

This Ordinance was approved for advertisement at the May 9, 2013 Commission Meeting.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Ordinance No. 543  
Amendments

**RECOMMENDATION:**

Motion to approve Ordinance No. 543

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

**ORDINANCE NO. 543**

**AN ORDINANCE OF THE CITY OF LOVINGTON, NEW MEXICO AMENDING TITLE 10,  
CHAPTER 10.04-UNIFORM TRAFFIC CODE**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 10,  
CHAPTER 10.04 BE AND HEREBY IS AMENDED AS FOLLOWS:

**10.04.010 Adoption**

The 2010 compilation of the New Mexico Uniform Traffic Ordinance, comprising of  
section 12-1-1 through 12-13-6 inclusive, and all changes through July 1, 2016, are  
herewith adopted by reference, pursuant to Section 3-17-6 N.M.S.A, 1978.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON ON THE 13<sup>th</sup> DAY of  
JUNE, 2016.

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PAUL CAMPOS, Mayor

ATTEST:

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CAROL ANN HOGUE, City Clerk

## 2016 UTO Changes

Underlined is new material

[bracketed is deleted material]

### 12-7-9.2      OPERATION OF OFF-HIGHWAY MOTOR VEHICLES ON STREETS OR HIGHWAYS -- PROHIBITED AREAS.

A.      No person shall operate an off-highway motor vehicle on any limited access street at any time or any paved street or highway except as provided in Subsection B, C or D of this section.

B.      Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the street. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.

C.      If authorized by ordinance or resolution of a local authority or the State Transportation Commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing authority if:

(1)      the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;

(2)      the vehicle has brakes, mirrors and mufflers;

(3)      the operator has a valid driver's license, instruction permit or provisional license and an off-highway motor vehicle safety permit;

(4)      the operator is insured in compliance with the provisions of the Mandatory financial Responsibility Act; and

(5)      the operator of the vehicle is wearing eye protection and a safety helmet that comply with the Off-Highway Motor Vehicle Act.

D.      By ordinance or resolution, a local authority or the State Transportation Commission may establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways pursuant to Subsection C of this section.

~~[E]~~ E. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.

~~[D]~~ F. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the Energy, Minerals and Natural

Resources Department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of Energy, Minerals and Natural Resources.

[E] G. Unless authorized, a person shall not:

(1) remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or

(2) install any off-highway motor vehicle-related sign. (66-3-1011 NMSA)

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-43: Engineering Agreement Amendment  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 3, 2016

**STAFF SUMMARY:**

Resolution 2016-43 will authorize the Mayor to execute an amendment to the Professional Services Agreement between the City and Pettigrew & Associates for the drilling of the three new water wells in the municipal well field. The amendment will allow for Pettigrew and Associates to provide engineering, technical, bid preparation and review, and construction management for the water meter replacement project. This is necessary as the cost of the project requires an engineer per State procurement code.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

\$29,700 + NMGRT, all of which can be recovered from the awarded Capital Outlay Funding.

**ATTACHMENTS:**

Professional Services Agreement with Attachments  
Resolution 2016-43

**RECOMMENDATION:**

Motion to approve Resolution 2016-43

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**AGREEMENTS FOR ENGINEERING SERVICES  
(Publicly Funded Project)**

THIS Agreement, made this \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_ by and between City of Lovington hereinafter referred to as the OWNER, and Pettigrew and Associates, P.A. hereinafter referred to as the ENGINEER. **Contract becomes effective on the date of the last signature.**

The OWNER intends to construct a Project consisting of installation of radio read water meters and equipment within the City of Lovington

in Lea County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any subagreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

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Engineering Services during the Operation Phase

## **SECTION A – GENERAL PROVISIONS**

### **1. General**

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may be become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

### **2. Approvals**

(a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their

responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

### **3. Responsibilities of the ENGINEER**

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

#### **4. Responsibilities of the OWNER**

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

#### **5. Changes**

(a) The OWNER may, at any time, with prior approval of the Funding Agency, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

## **6. Termination of Contract**

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 6(c) of this clause.

(g) The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the OWNER may immediately terminate this Agreement by giving ENGINEER written notice of such termination. The OWNER's decision as to whether sufficient appropriations are available shall be accepted by the ENGINEER and shall be final. ENGINEER hereby waives any rights to assert an impairment of contract claim against the OWNER or the NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the OWNER or the Department

(h) This contract is funded in whole or in part by funds made available under a NMED Grant Agreement. Should the NMED early terminate the grant agreement, the OWNER may early terminate this contract by providing ENGINEER written notice of such termination. In the event of termination pursuant to this paragraph, the OWNER's only liability shall be to pay ENGINEER or vendor for acceptable goods delivered and services rendered before the termination date.

## 7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. The OWNER is solely responsible for the payment of any interest incurred due to late payments. The FUNDING AGENCY will not reimburse for any interest incurred. In addition, after ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

## 8. Time

### (a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract

amount for overhead or for any other reason and shall strictly apply toward liquidated damages.

5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER'S control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the ATTACHMENT, not as a penalty, but as liquidated damages.
2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER amount specified in the ATTACHMENT (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

**9. Project Design**

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

**10. Audits and Access to Records**

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the

financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency (ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

## **11. Subcontracts**

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER and the FUNDING AGENCY must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the OWNER AND FUNDING AGENCY prior written approval.

## 12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount specified in ATTACHMENT for injury to any one person and amount specified in ATTACHMENT on account of any one accident and in the amount specified in ATTACHMENT for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount specified in ATTACHMENT per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

## 13. Environmental Condition of Site

(a) OWNER has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) OWNER represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

(c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) OWNER and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days' notice.

(f) OWNER acknowledges that Engineer is performing professional services for OWNER and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### **14. Mutual Waiver**

To the fullest extent permitted by law, OWNER and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### **15. Independent Contractor**

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

#### **16. Equal Employment Opportunity**

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

#### **17. Gratuities**

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

#### **18. Covenant Against Contingent Fees**

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

**19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)**

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

**20. Remedies**

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

**21. Assurance Against Debarment**

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

**SECTION B – ENGINEERING SERVICES**

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

**Engineering Services During the Planning Phase**

1. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT I – Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER’s services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

**Engineering Services During the Design Phase**

2. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT II – Design Services scope of work and cost proposal and section B-2 through B-10 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

3. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment II.
4. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.
5. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the OWNER's goals.
6. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.
7. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).
8. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.
9. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.
10. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to

the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.

11. Section B-2 through B-10 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

### **Engineering Services During the Construction Phase**

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-12 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
13. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.
14. Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.
15. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.
16. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.
17. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep OWNER informed of the progress of the Work.
18. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike

manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

19. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.
20. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.
21. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.
22. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, the Funding Agency and others as required.
23. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.
24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

### **Engineering Services During the Operation Phase**

25. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT IV – Operational Services scope of work and cost proposal and section B-25 through B-29 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
26. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.
27. The ENGINEER shall provide to the OWNER monthly operation reports on the performance of the Project.
28. The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.
29. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall

advise the OWNER in writing whether the Project meets the project performance standards.

30. Section B-25 through B-29 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

## **SECTION C – ADDITIONAL ENGINEERING SERVICES**

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.
2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.
3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.
5. Appear before courts or boards on matters of litigation related to the project.
6. Assist OWNER with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.
7. Prepare an operation and maintenance manual.
8. Provide construction-staking services.
9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
10. Provide services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements

including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Attachment I.

12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.

13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.

14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

**SECTION D – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT**

(Describe, attach or indicate “None”)

For Planning Grant Funds from NMFA Insert the note: For Preliminary Engineering Reports or other documents paid for using NMFA Planning Grant Funds, the engineer will only be able to submit one invoice at the end of the project upon approval of the planning document.

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

**The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ENGINEER: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Date \_\_\_\_\_

REVIEWED: FUNDING AGENCY  
NAME: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Date \_\_\_\_\_

## ATTACHMENTS

Please check the appropriate box and include applicable attachments

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the 30th day of August, 2013 by and between the City of Lovington, the OWNER, and Pettigrew and Associates, PA, the ENGINEER, the OWNER and ENGINEER agree this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_ that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

**ATTACHMENT I – Planning Services scope of work, cost proposal and compensation for Engineering Services During the Planning Phase**

**ATTACHMENT II – Design Services scope of work, cost proposal and compensation for Engineering Services During the Design Phase**

**ATTACHMENT III - Construction Services scope of work, cost proposal and compensation for Engineering Services During the Construction Phase**

**ATTACHMENT IV - Operational Services scope of work, cost proposal and compensation for Engineering Services During the Operation Phase**

2. Compensation for ENGINEERING SERVICES shall be by the

**LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate ATTACHMENTS shall not exceed \$29,700, excluding gross receipt tax and reimbursables.

**STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate ATTACHMENTS shall not exceed \$ \_\_\_\_ without prior written approval of the OWNER, with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the ENGINEER upon written authorization from the OWNER and concurrence of the Funding Agency), shall be by the

**LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate ATTACHMENT shall not exceed \$\_\_\_\_, excluding gross receipt tax and reimbursables.

**STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate ATTACHMENT shall not exceed \$ \_\_\_\_ without prior written approval of the OWNER and with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5.

Contract Time under Section B. and for the purpose of Section A.8 shall be \_\_\_\_ calendar days (or as specified in the Attachments).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER fifty dollars (\$50) (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement (See attached

project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$500,000 for injury to any one person and \$500,000 on account of any one accident and in the amount of not less than \$2,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$2,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate ATTACHMENTS. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of 0 (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Reimbursable expenses shall not exceed the estimate in the ATTACHMENT without prior written approval of the OWNER, with Funding Agency concurrence.

8. The method for interim or partial payments, such as milestone or time & materials, shall be: \_\_\_\_\_

The rest of the page is intentionally left blank

9. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER: City of Lovington  
By \_\_\_\_\_  
Type Name Paul Campos  
Title Mayor  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ENGINEER: Pettigrew & Associates, P.A.  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Date \_\_\_\_\_

REVIEWED: FUNDING AGENCY  
NAME: \_\_\_\_\_  
By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Date \_\_\_\_\_

**Attachment II**  
**Agreement for Engineering Services**

**Design Services scope of work, cost proposal and compensation for Engineering Services during the Design Phase**

A. Scope

Coordinate with City staff to obtain data necessary for design plans, attend meetings as needed with City of Lovington Staff to discuss and refine elements of Design Scope of Services

Develop Water Meter Installation Plans to include Title Sheet, General Notes, Meter Location Map, Standard Installation Details, and Traffic Control Plan.

Develop Project Specifications, verification of preliminary site survey to completed installation

State and City Plan review

Solicit bidders to install radio read water meters with materials purchased by the City of Lovington, open bids, review and recommend bid award, and conduct the pre-construction conference, preparation of correspondence.

B. Cost Proposal – Include hourly breakdown for each task (see example)

C. Schedule of time to complete work

Bid documents must be submitted to NMED-CPB for review no later than July 30, 2016. Project will be bid no later than November 1, 2016.

## **Attachment III**

### **Agreement for Engineering Services**

#### **Construction Services scope of work, cost proposal and compensation for Engineering Services during the Construction Phase**

##### **A. Scope**

Provide construction management services during the construction to include periodic construction observation, review and approve contractor material and procedure submittals, respond to questions from owner, contractor, and relevant third parties as related to construction.

Prepare final project documents.

##### **B. Cost Proposal – Include hourly breakdown for each task (see example)**

##### **C. Schedule of time to complete work**

Project will be completed no later than June 1, 2017.



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## LETTER FEE PROPOSAL

**To:** James Williams – City Manager  
City of Lovington

**From:** Debra P. Hicks, PE/LSI

**Date:** May 19, 2016

**Subject:** Water Meter Installation – Lovington, NM

### SCOPE OF SERVICES

#### 1. Civil Design and Construction Management Services

This proposal includes Civil Design services for the proposed water meter installations located in Lovington, NM.

##### A. Design and Management Services

**\$29,700.00 Lump Sum + NMGR**

- ✔ City Coordination – Includes project meetings as needed with City of Lovington Staff to discuss and refine elements of Design Scope of Services.
  - Coordinate with City staff to get data necessary for design plans
- ✔ Water Meter Installation Plans to include:
  - Title Sheet
  - General Notes
  - Meter Location Map
  - Standard Installation Details
  - Traffic Control Plan
- ✔ Project Specifications
- ✔ Verification of preliminary site survey to completed installation.
- ✔ State and City Plan Review and Comments
- ✔ Bid Documents and Negotiation
- ✔ Correspondence

- 
- ❖ Construction Administration – Review and approve Contractor material and procedure submittals. Respond to questions from Owner, Contractor, and relevant third parties as related to construction.
    - **Pettigrew & Associates** shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. Pettigrew & Associates does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Construction Documents or any applicable laws, codes, rules, regulations and Contractor Standard of Care.
    - **Pettigrew & Associates** will recommend to the Owner that Contractor's work be disapproved and rejected while it is in progress if, on the basis of periodic observation and laboratory/field testing, Pettigrew & Associates believes that such work will not produce a completed Project that conforms generally to the Construction Documents or that it will prejudice the integrity of design concept of the completed Project.
    - **Pettigrew & Associates** will issue necessary clarifications and interpretations of the Construction Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Construction Documents.
    - **Pettigrew & Associates** will recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
  - ❖ Project Closeout

## **B. Construction Document Deliverables**

- ❖ Provide a digital copy in pdf format and one (1) printed copy of 90% completion plans as identified above.
- ❖ Provide one (1) copy of the 100% completion Construction Documents with PE signatures as identified above.
- ❖ Provide a digital copy in pdf format of 100% completion Construction Documents with PE signature to Owner as identified above.

## **2. Additional Services**

## **Time & Materials**

Client generated changes to planning and work efforts once work is in progress, including consideration of areas outside of the project limits, or additions to the project scope or budget that causes additional work; will be billed at hourly rates, per change-order proposals approved by the Client or the Client's Representative, until the work is at the same level of completion as it was prior to the change. Any additional work not specifically included in the above scope of services will be accomplished as Additional Services.

---



All fees are presented without NMGRT. NMGRT will be billed at current rates.

The following is a summary of standard insurance coverage for **Pettigrew & Associates, P.A.**

Commercial General Liability:	\$2,000,000 aggregate, \$1,000,000 per occurrence
Automobile:	\$1,000,000 combined single limit (any Auto)
Worker's Compensation:	Statutory: \$500,000
Employer's Liability:	\$500,000 each accident, \$500,000 each employee (disease), \$500,000 policy limit (disease)
Professional Liability:	\$2,000,000 per claim, \$2,000,000 annual aggregate
Umbrella Liability:	\$5,000,000 per occurrence, \$5,000,000 aggregate

Please note:

- a. Required increases to these policy limits may result in additional fees to the client.
- b. Professional Liability and E&O Conditions are explicitly limited to "Professional Standard of Care".
- c. Signed copy of attached Letter of Intent is required.
- d. Contractual verbiage of indemnification and warranty may negate client's rights to insurance.
- e. Fees presented assume no retainage.

We appreciate the opportunity to present this proposal and look forward to hearing from you.

Sincerely,

**Pettigrew & Associates, P.A.**



Debra P. Hicks, PE/LSI  
President & CEO





# LETTER OF INTENT

In order to proceed, please sign and return this Letter of Intent acknowledging the terms of the business as detailed along with the New Client information.

**Attention:** David Roybal [droybal@pettigrew.us](mailto:droybal@pettigrew.us)  
[accountsreceivable@pettigrew.us](mailto:accountsreceivable@pettigrew.us) or (fax) 575-393-1543

**Project:** Water Meter Installation

**Project Location:** Lovington, NM

**Description of Work:** Civil Design and Construction Management Services

**Estimated Fees:** Design and Management \$29,700.00 Lump Sum + NMGR

**By signing below, we accept the terms and conditions of the Letter of Intent.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Company Information					
Client Name:					
Owner Name/Title:					
Street Address:					
City:		State:		Zip:	
Phone:		Fax:			
E-mail Address:					
Company Website:					
Billing Information (If different than above)					
A/P Contact Name:					
Billing Address:					
City:		State:		Zip:	
Phone:		Fax:			
Email Address:					
P.O. Number:		NTTC:	<b>If yes attach copy</b>		
Project Contact					
Contact Name/Title:					
Phone:		Fax:			
Email Address:					

---

**Water Meter Installation - Lovington, NM**  
**Manhours Estimate as Ammended on 5/23/2016**  
**Prepared by Pettigrew & Associates, P.A.**

<b>Description/Personnel</b>	<b>Principal</b>	<b>Sr. PE/PS</b>	<b>PM</b>	<b>EI III</b>	<b>EI I</b>	<b>T IV</b>	<b>Surv Crew</b>
Title Sheet	0.5		0.5	4		2	
General Notes	0.5		1	4		2	
Meter Location Map	1		3	12		28	
Standard Details	1.5		2	12		6	
Traffic Control	1		1.5	7		3	
Project Specifications	2		3	6		24	
Project Coordination	1	3	8	6			
Bid Docs and Negotiation	2	2	1			16	
Bid Acceptance and Certification	1	6	2			8	
Pay App Review and Verification	1.5		4.5			26.25	
Field verification of preliminary survey			2			12	
QA Review		3	2	8		4	
State review	1	1	2	4		4	
COL Review	1	2	2	3		3	
<b>Total Man Hours</b>	14	17	34.5	66	0	138.25	0
<b>Unit Rate</b>	\$160.00	\$156.00	\$144.00	\$132.00	\$100.00	\$80.00	\$144.00
<b>Unit Cost</b>	\$2,240.00	\$2,652.00	\$4,968.00	\$8,712.00	\$0.00	\$11,060.00	\$0.00
<b>Total Labor Cost</b>							<b>\$29,632.00</b>

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-43**

**EXECUTION OF AN AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF LOVINGTON AND PETTIGREW & ASSOCIATES FOR WATER METER  
INSTALLATION**

**WHEREAS**, the City of Lovington and Pettigrew & Associates executed a Professional Services Agreement on May 13, 2013 for the design and engineering of new water wells; and

**WHEREAS**, this project is still in progress; and

**WHEREAS**, the cost of the radio read water meter project requires the services of a professional engineer per procurement code; and

**WHEREAS**, upon review by the New Mexico Environment Department Construction Programs Bureau they have determined that the original contract for engineering services can be amended to include the services required for the water meter project.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission authorizes the Mayor to execute the amendment to the Professional Services Agreement, hereto attached for reference.

DONE THIS 13<sup>TH</sup> DAY OF JUNE, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-44: Wellness Center Agreement  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 10, 2016

**STAFF SUMMARY:**

Staff have prepared Resolution 2016-44 that will authorize the Mayor to execute the agreement between the City, Nor Lea Hospital, and Lovington Public Schools for the Community Wellness and Fitness Center.

The agreement is the mechanism that will allow for the City to contribute financially to the operational costs of the facility. The facility will be owned, managed, and operated solely by the Nor Lea Hospital District.

A copy of the agreement was not available at the time of publication of the Commission Packet. City staff are awaiting document delivery from the attorney the hospital engaged. Once the document is received, it will be distributed.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

5 year agreement; payment to hospital to not exceed \$9,375 per month

**ATTACHMENTS:**

Resolution 2016-44

**RECOMMENDATION:**

If document is received before 6/13/16 meeting, staff recommend approval.

If document is not received, staff request this item be tabled.

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-44**

**EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF LOVINGTON, NOR LEA  
HOSPITAL, AND LOVINGTON MUNICIPAL SCHOOLS FOR A COMMUNITY WELLNESS  
AND FITNESS CENTER**

**WHEREAS**, the City adopted Resolution 2016-2 on January 11, 2016 that endorsed the planned Community Wellness and Fitness Center and committed financial support for operational costs; and

**WHEREAS**, the agreement between the City, Nor Lea Hospital, and Lovington Municipal Schools is ready for adoption.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission authorizes the Mayor to execute the agreement, attached hereto for reference, between the City of Lovington, Nor Lea Hospital, and Lovington Public Schools for the Community Wellness and Fitness Center.

DONE THIS 13<sup>TH</sup> DAY OF JUNE, 2016 at

City of Lovington  
New Mexico

---

Paul Campos, Mayor

ATTEST:

---

Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-45: Judicial Complex Agreement  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 10, 2016

**STAFF SUMMARY:**

Resolution 2016-45 will authorize the Mayor to execute on behalf of the City the agreement between the City and Lea County to provide \$400,000 in financial assistance to obtain additional acreage needed for public parking or construction of the new Judicial Complex in downtown Lovington. The funding amount was previously authorized in Resolution 2016-1 by the City Commission and has been budgeted for utilizing the General Fund.

A final, non-watermarked version of the agreement will be available to the Commission at the June 13, 2016 meeting.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

\$400,000 from the City General Fund

**ATTACHMENTS:**

Resolution 2016-45  
Agreement

**RECOMMENDATION:**

Motion to approve Resolution 2016-45.

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-45**

**EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF LOVINGTON AND LEA COUNTY, NEW MEXICO THAT  
PROVIDE FINANCIAL SUPPORT FOR THE DEVELOPMENT OF THE NEW LEA COUNTY JUDICIAL COMPLEX**

**WHEREAS**, the County of Lea has planned for a new Judicial Complex and intends to begin construction at the end of 2016; and

**WHEREAS**, the Lovington City Commission and residents of the community have expressed support of construction of the new Judicial Complex at the site of the former Lea County Detention Facility and Lea County Sheriff Office; and

**WHEREAS**, movement of the Judicial Complex out of the downtown area would have a detrimental impact on the economy of Lovington, detract from the importance of the Lovington downtown area, and spread out essential government functions; and

**WHEREAS**, in response to the request for assistance from Lea County, the City Commission adopted Resolution 2016-1 which provides what assistance the City of Lovington can provide to facilitate construction of the new Judicial Complex in the downtown area; and

**WHEREAS**, Resolution 2016-1, item 12, specifically states that the City will provide financial assistance if needed to the County for the acquisition of the identified 1.25 additional acres for public parking in an amount to not exceed \$400,000; and

**WHEREAS**, the Board of Lea County Commissioners did adopt Resolution 16-JAN-009R that resolves the new judicial complex be constructed in downtown Lovington on the condition that the City of Lovington enter into a written agreement with Lea County.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission authorizes the Mayor to execute the agreement, attached hereto for reference, between the City of Lovington and Lea County, New Mexico to provide no more than \$400,000 for the acquisition of additional property for public parking or construction of the new Judicial Complex in downtown Lovington, New Mexico.

DONE THIS 13<sup>TH</sup> DAY OF JUNE, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

**FINANCIAL ASSISTANCE FOR THE ACQUISITION OF REAL PROPERTY FOR THE  
DEVELOPMENT OF THE NEW LEA COUNTY JUDICIAL COMPLEX**

**Between  
CITY OF LOVINGTON, NM & LEA COUNTY**

This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 between the Commission of the City of Lovington, New Mexico ("City"), a local political subdivision of the State of New Mexico and the and the Board of County Commissioners of Lea County, New Mexico ("County").

**RECITALS**

**WHEREAS**, the County of Lea has planned for a new Judicial Complex and intends to begin construction at the end of 2016; and

**WHEREAS**, the Lovington City Commission and residents of the community have expressed support of construction of the new Judicial Complex at the site of the former Lea County Detention Facility and Lea County Sheriff Office; and

**WHEREAS**, movement of the Judicial Complex out of the downtown area would have a detrimental impact on the economy of Lovington, detract from the importance of the Lovington downtown area, and spread out essential government functions; and

**WHEREAS**, in response to the request for assistance from Lea County, the City Commission adopted Resolution 2016-1 which provides what assistance the City of Lovington can provide to facilitate construction of the new Judicial Complex in the downtown area; and

**WHEREAS**, Resolution 2016-1, item 12, specifically states that the City will provide financial assistance if needed to the County for the acquisition of the identified 1.25 additional acres for public parking in an amount to not exceed \$400,000; and

**WHEREAS**, the Board of Lea County Commissioners did adopt Resolution 16-JAN-009R that resolves the new judicial complex be constructed in downtown Lovington on the condition that the City of Lovington enter into a written agreement with Lea County.

**NOW, THEREFORE**, in consideration of the agreements and covenants contained herein the parties agree as follows:

## **AGREEMENT**

### **1.0 COMPENSATION**

City agrees to reimburse the County a maximum of four hundred thousand dollars (\$400,000) for the acquisition of property in the downtown area that is required to provide for additional parking for or construction of the new Judicial Complex.

### **2.0 PAYMENT**

The County shall submit to the City a copy of the bill of sale, purchase contract, and copy of the County payment issued for the purchase of the property(s) that will be utilized for additional parking for or construction of the new judicial complex.

City shall provide reimbursement to the County within receipt of all documentation required under this paragraph 2.0.

County shall be strictly accountable for receipts and documents relating hereto and shall make all relevant financial records available to City upon request.

### **3.0 TERM**

This agreement is effective \_\_\_\_\_, 2016 and shall terminate on the earlier of (i) December 31, 2016, or (ii) when budgeted funds for reimbursement are no longer available due to exceeding the maximum amount of assistance as specified in paragraph 1.0.

### **4.0 NOTICES; REPRESENTATIVES OF THE PARTIES**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To City:  
Lovington City Hall  
214 S. Love Street  
Lovington, New Mexico 88260  
Attn: James R. Williams, City Manager

To County:  
Lea County Courthouse  
100 North Main Street  
Lovington, New Mexico 88260  
Attn: Mike Gallagher, County  
Manager

**5.0**    **LIABILITY**

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

**6.0**    **AMENDMENTS**

This Agreement may be amended only by a written instrument signed by all the parties, and then only to the extent of such instrument.

**7.0**    **GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New Mexico.

**IN WITNESS WHEREOF**, we have hereunto affixed our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**BOARD OF COUNTY COMMISSIONERS  
OF LEA COUNTY, NEW MEXICO**

**CITY OF LOVINGTON, NEW MEXICO**

By: \_\_\_\_\_  
Ron Black, Chairman

By: \_\_\_\_\_  
Paul Campos, Mayor

ATTEST: Lea County Clerk

ATTEST: Lovington City Clerk

By: \_\_\_\_\_

By: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Lea County Attorney

By: \_\_\_\_\_  
Lovington City Attorney

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-46: ICE/HSI MOU  
DEPARTMENT: Police Department  
SUBMITTED BY: David Rodriguez, Chief of Police  
DATE SUBMITTED: June 3, 2016

**STAFF SUMMARY:**

Resolution 2016-45 will authorize the Mayor to execute a Memorandum of Understanding between Immigration Customs Enforcement and Homeland Security Investigations. This MOU will allow the City to obtain reimbursement for joint operations and task force participation.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

Reimbursement of overtime salary expenses directly related to work on a joint operation with ICE/HSI SAC El Paso.

**ATTACHMENTS:**

MOU  
Resolution 2016-46

**RECOMMENDATION:**

Motion to approve Resolution 2016-46

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN  
IMMIGRATION AND CUSTOMS ENFORCEMENT, HOMELAND  
SECURITY INVESTIGATIONS (HSI) AND LOCAL, COUNTY, OR  
STATE LAW ENFORCEMENT AGENCY FOR THE  
REIMBURSEMENT OF JOINT OPERATIONS EXPENSES FROM  
THE TREASURY FORFEITURE FUND**

This Agreement is entered into by the **City of Lovington** (NCIC CODE #**NM 0130400**) and Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), Office of the Special Agent in Charge for El Paso, TX, for the purpose of the reimbursement of costs incurred by the in providing resources to joint operations/task forces.

Payments may be made to the extent they are included in the ICE/HSI Fiscal Year Plan, and the money is available within the Treasury Forfeiture Fund to satisfy the request(s) for the reimbursement of overtime expenses and other law enforcement expenses related to joint operations.

**I. LIFE OF THIS AGREEMENT**

This Agreement becomes effective on the date it is signed by both parties. It remains in force unless explicitly terminated, in writing, by either party.

**II. AUTHORITY**

This Agreement is established pursuant to the provisions of 31 USC 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses incurred by local, county, and state law enforcement agencies as participants of joint operations/task forces with a federal agency participating in the Treasury Forfeiture Fund.

**III. PURPOSE OF THIS AGREEMENT**

This Agreement establishes the responsibilities of both parties and the procedures for the reimbursement of certain overtime expenses and other law enforcement expenses pursuant to 31 USC 9703.

**IV. APPLICABILITY OF THIS AGREEMENT**

This agreement is valid for all joint investigations led by ICE/HSI SAC El Paso, with the participation of the **City of Lovington** and until terminated, in writing, by either party.

## V. TERMS, CONDITIONS, AND PROCEDURES

-2-

### A. Assignment of Officer(s)

To the maximum extent possible, the **City of Lovington** shall assign dedicated officers to any investigation or joint operation.

Included as part of this Agreement, the **City of Lovington** shall provide the ICE/HSI SAC El Paso with the names, titles, four last digits of SSNs, badge or ID numbers, and hourly overtime wages of the officer(s) assigned to the joint operation. This information must be updated as necessary.

### B. Submission of Requests for Reimbursement (Invoices) and Supporting Documentation

1. The **City of Lovington** may request the reimbursement of overtime salary expenses directly related to work on a joint operation with ICE/HSI SAC El Paso, performed by its officer(s) assigned to this joint operation. In addition, the **City of Lovington**, may request reimbursement of other investigative expenses, such as travel, fuel, training, equipment and other similar costs, incurred by officer(s) assigned as members of the designated joint operations with the ICE/HSI SAC El Paso.

The **City of Lovington** **may not** request the reimbursement of the same expenses from any other Federal law enforcement agencies that may also be participating in the investigation.

2. **Reimbursement payments will not be made by check.** To receive reimbursement payments, the **City of Lovington** must ensure that Customs and Border Protection, National Finance Center (CBP/NFC) has a current ACH Form on file with the agency's bank account information, for the purposes of Electronic Funds Transfer. The ACH Form must be sent to the following address:

CBP National Finance Center  
Attn: Forfeiture Fund  
6650 Telecom Dr.  
INDIANAPOLIS, IN 46278

If any changes occur in the law enforcement agency's bank account information, a new ACH Form must be filled out and sent to the CBP/NFC as soon as possible.

3. In order to receive the reimbursement of officers' overtime and other expenses related to joint operations, the **City of Lovington** must submit to ICE/HSI SAC El Paso the TEOAF Form "Local, County, and State Law Enforcement Agency Request for Reimbursement of Joint Operations Expenses (Invoice)", signed by an authorized representative of that agency and accompanied by supporting documents such as copies of time sheets and receipts.
4. The **City of Lovington** remains fully responsible, as the employer of the officer(s) assigned to the investigation, for the payment of overtime salaries and related benefits such as tax withholdings, insurance coverage, and all other requirements under the law, regulation, ordinance, or contract, regardless of the reimbursable overtime charges incurred. Treasury Forfeiture Fund reimburses overtime salaries. Benefits are not reimbursable.
5. The maximum reimbursement entitlement for overtime worked on behalf of the joint investigation is set at \$15,000 per officer per year.
6. The **City of Lovington** will submit all requests for the reimbursement of joint operations' expenses to ICE/HSI SAC El Paso, at the following address: US Immigration and Customs Enforcement, Homeland Security Investigations, SAC El Paso, Attn: Isabella Ruiz, 4191 North Mesa, El Paso, TX 79902.

## **VI. PROGRAM AUDIT**

This Agreement and its provisions are subject to audit by ICE/HSI, the Department of the Treasury Office of Inspector General, the General Accounting Office, and other government designated auditors. The **City of Lovington** agrees to permit such audits and agrees to maintain all records relating to these transactions for a period not less than three years; and in the event of an on-going audit, until the audit is completed.

These audits may include reviews of any and all records, documents, reports, accounts, invoices, receipts of expenditures related to this agreement, as well as interviews of any and all personnel involved in these transactions.

## **VII. REVISIONS**

The terms of this Agreement may be amended upon the written approval by both parties. The revision becomes effective on the date of approval.

**VIII. NO PRIVATE RIGHT CREATED**

This is an internal government agreement between the ICE/HSI SAC El Paso and the **City of Lovington** and is not intended to confer any right or benefit to any private person or party.

**Signatures:**

\_\_\_\_\_  
Waldemar Rodriguez  
Special Agent in Charge  
SAC El Paso  
El Paso, Texas

\_\_\_\_\_  
Paul Campos  
Mayor  
City of Lovington  
Lovington Police Department

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-46**

**EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN IMMIGRATION AND  
CUSTOMS ENFORCEMENT, HOMELAND SECURITY INVESTIGATIONS AND THE CITY OF  
LOVINGTON**

**WHEREAS**, the City of Lovington will assist Immigration and Customs Enforcement (ICE) and Homeland Security Investigations (HSI) during joint operations and task forces; and

**WHEREAS**, an agreement between the City and ICE/HSI will provide a means of the City obtaining reimbursement for these activities.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission authorizes the Mayor to execute the Memorandum of Understanding, attached hereto for reference, between the City of Lovington and ICE/HSI.

DONE THIS 13<sup>TH</sup> DAY OF JUNE, 2016 at

City of Lovington  
New Mexico

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-47: TDS Agreement  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 7, 2016

**STAFF SUMMARY:**

Staff are requesting authorization to execute the attached agreement with TDS that will provide high speed fiber internet at the Lovington You Center. A recent survey indicated a high preference for enhancements to the computer lab. The lab, in addition to the gaming center will require a faster internet connection speed that cannot be provided by the wireless solution currently in place.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

\$39.95 per month for 36 months (General Fund Budget)

**ATTACHMENTS:**

Agreement  
Resolution 2016-47

**RECOMMENDATION:**

Motion to approve Resolution 2016-47

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager



## Terms and Conditions

1. **Agreement.** This Commercial Service Agreement (“Agreement”), made on June 6, 2016 (“Agreement Date”) is between TDS Baja Broadband LLC (“TDS”) and Youth Center (“Customer”). The Customer hereby agrees to purchase from TDS and TDS agrees to sell the Services (“Services”) identified in this Agreement or any future Amendments agreed to by the parties pursuant to the terms and conditions set forth herein. Amendments and addenda are included herein by reference as integral parts of this Agreement. If Customer wishes to change the Services or add additional Services, Customer and TDS shall execute an Amendment describing such changes or additions. Unless specifically set forth on any Amendment, if the terms of any documents incorporated by reference are inconsistent with this Agreement, the terms of this Agreement will control. Customer agrees that the TDS Broadband Internet Service Disclosures (including the Acceptable Use Policy for Internet Services and the other documents referenced therein) and Privacy Notice [together referred to as the “TDS Internet Terms of Service”] as stated on [www.HelloTDS.com](http://www.HelloTDS.com) will apply to any Internet Services provided under this Agreement. The TDS Internet Terms of Service are included herein by reference as integral parts of this Agreement. Further, Customer also agrees to accept the Google Terms of Service if Customer chooses to use TDS - provided email service. Customer acknowledges certain duties and obligations of TDS under this Agreement may be performed by certain affiliates of TDS.
2. **Service Period.** The Term commences on the Agreement Date and continues for the number of months specified on page 1 of this Agreement for such Service following the Service Commencement Date. Upon expiration of any Service Term, this Agreement shall automatically renew with respect to the Service for the number of months of the original Service Term at TDS’s then-current applicable rates, unless either party terminates the Agreement by giving thirty (30) days prior written notice to the other party before the expiration of the current term.
3. **Billing.** Compensation to be paid by Customer to TDS for Services provided under this Agreement shall be established at the rate and terms provided in this Agreement. The Customer agrees to pay TDS the contract amount committed to under this Agreement. All invoices are due within 30 days from date of invoice. A late charge of 1-1/2% per month, or the highest permissible amount chargeable by law, whichever is less, may be charged on any unpaid balance owed to TDS which remains unpaid for 30 days or more after the date of the invoice. TDS may adjust the Base Rate once in each calendar year. Notwithstanding the above, TDS may also periodically adjust rates due to increases in programming, copyright, and retransmission costs. The Base Rate shall be exclusive of taxes and external fees including, but not limited to, retransmission fees and franchise or other governmental fees. In the event that any action taken by any legislative, judicial or regulatory body directly or indirectly causes a reduction in revenue or an increase in expenses with respect to the provision of the Services, TDS shall have the right to increase the amount of Recurring Charges set forth in this Agreement upon 30 days’ notice. Customer agrees that any unlimited service is being provided based on reasonable usage, and that use of the service for auto dialers, long distance dialup access to the Internet or other information services, call centers, certain switching applications or other high volume calling applications is not permitted and will entitle TDS to terminate the Service upon written notice of the violation. TDS reserves the right to monitor Customer’s usage to determine compliance with these limitations. Bundled prices represented on this Agreement may be billed separately on Customer’s bill. The separate pricing may not be used with any other product or bundled products. It is the Customer’s responsibility to review the monthly invoices for accurate representation of charges. Disputes concerning the accuracy of any invoice that has been paid must be brought in writing within three (3) months of the due date of the invoice.
4. **Subsequent Additions/Deletions.** For each new product or service added to this Agreement after a 60-day grace period, installation charges will apply. Installation charges for advanced business products will be quoted at the time of request on an individual case basis. Subsequent feature deletions, after a 60-day grace period, will be assessed a service order charge per account. Any preferred customer discounts, volume discounts or promotional discounts are subject to change if Customer deletes Services from the original service agreement. Any adjustments in special discounts will be quoted at the time of the request on an individual case basis.
5. **Special Construction.** Where facilities are not available or if equipment, new facilities or changes to existing facilities are required for the provision of additional Services, a special construction charge will apply in addition to the monthly service charge. Customer may be required to pay additional charges or to contract for Services beyond the normal service term, or both.
6. **Service Installation / Equipment; Customer Requirements and Responsibilities.** TDS shall only be responsible for bringing the lines ordered by Customer to the Customer designated demarcation point at Customer’s premises where TDS equipment terminates. In no event shall TDS be responsible for connecting, installing or wiring past the demarcation point. Customer agrees and acknowledges that it shall be Customer’s sole responsibility to provide and arrange for all necessary wiring and equipment. At the time of service installation and during maintenance and repair, Customer agrees to provide at no charge, access to any equipment, right to make use of all existing poles, conduits, wiring and other facilities on the premises which Customer owns or controls (the “Premises”), a safe working environment and adequate storage space for a reasonable quantity of replacement parts, electrical power to operate the Services and adequate space in Customer’s Premises to house any equipment used in connection with provision of the Services, and shall take all other actions reasonably required for the performance of Services by TDS under

this Agreement. Neither Customer nor the owner or any resident of the Premises shall have any right, title or interest in the equipment. The equipment shall always be owned by TDS and shall not be a fixture of the Premises. Upon the expiration or termination of this Agreement, or the expiration of TDS's legal right to provide service to the Premises, TDS shall remove reasonably accessible equipment from the Premises within a reasonable time. If TDS installs wiring on the Premises, the following clause applies: Upon the expiration or termination of this Agreement, or the expiration of TDS's legal right to provide Service to the Premises, at TDS's option upon notice to Customer, TDS may: (i) remove the wiring from the Premises within a reasonable time; or (ii) Customer shall purchase from TDS the wiring on the Premises at the fair market value for the full replacement of such wiring, including labor. Customer is responsible for the security of all passwords, equipment or systems that allow access to the Services provided by TDS. Customer acknowledges that they are responsible for actions on their account performed by others who have acquired Customer's passwords or access to Customer's equipment or systems with or without Customer's knowledge and Customer agrees to pay any charges that are incurred regardless of any claim the Customer may have against third parties based on unauthorized access to Customer's passwords, equipment or systems. Customer is also responsible for providing to TDS accurate, specific address and location information for all TDS telephone numbers provided (including any and all changes to such information) so that 911 calls can be properly directed to the appropriate PSAP (public safety answering point). If Customer moves the location of its voice service without the approval of TDS, then 911 calls may not transmit any information, or may otherwise send incorrect address information and/or be directed to the incorrect emergency services provider, which may result in a delay or failure of emergency services being dispatched to Customer's location.

7. **Insecurity of the Internet. CONNECTION TO THE INTERNET CREATES INSECURITY.** Security and disruption problems are inherent in the Internet. The very openness of the Internet creates risks that the Internet is insecure, and vulnerable to both intentional and unintentional disruption. Security breaches can occur for technical and other reasons, and, despite the implementation of security measures, we cannot guarantee that our networks are not vulnerable to unauthorized and illegal access, computer viruses and other disruptive problems. Our ability to provide our services depends in part on the reliability of the Internet and the networks of our partners, and our services can also be negatively affected by limitations inherent in the technology infrastructure supporting the Internet and the internal networks of Internet users. Customer must provide adequate information security for their own networks by using appropriately complex passwords, firewalls, and updated anti-virus and anti-spyware software. Availability of Internet service varies and speeds advertised may not be available at all service addresses. Certain speeds are only offered in areas served by TDS Fiber. Actual speeds experienced by customers vary and are not guaranteed. Speed ranges advertised are expressed as "up to" to represent network capabilities between customer location and the TDS network. Speeds vary due to factors, including: distance from switching locations and external/internal network conditions.
8. **Term and Termination.** TDS will provide Customer with the Services pursuant to the rates, terms and conditions specified herein, commencing on the latter of the requested service date or the day following the date in which TDS notifies Customer that the Service is ready for use (the "Service Commencement Date"). Upon any termination of the Services herein, Customer shall return all TDS-owned equipment in good working condition to TDS, or Customer will be responsible for the full cost of the equipment. Customer is responsible for any damage to equipment provided by TDS. Customers who terminate their Service prior to the expiration of the Term shall be liable for the repayment of any promotional credits, discounts or fee waivers including but not limited to installation fee waivers and for reimbursement of any special construction or non-recurring charges for Services or related facilities requested by Customer. If the Customer terminates this Agreement or disconnects Services before the end of the committed Term, Customer shall pay TDS an early termination charge equal to: (a) fifty percent (50%) of the unpaid balance of the Base Rate that would have been due throughout the remainder of the Term plus one hundred percent (100%) of the outstanding balance; plus (b) the full purchase price of any equipment as shown above, minus the amounts already paid on a per month basis up to the date of termination; plus (c) any and all one-time charges. Customer agrees that the forgoing early termination fees are fair and reasonable and that TDS's provision of the Services would not be commercially viable but for these Customer commitments. This Agreement shall remain effective until terminated in accordance with the provisions set forth herein.
9. **Customer's Representations and Agreements.** Customer represents to TDS that Customer is the legal owner or tenant of the Premises, and that no other person has any rights in the Premises that conflict with TDS's rights under this Agreement. Customer shall not attach to or use, and shall not allow anyone else to attach to or use, the Equipment for any purpose without TDS's prior written consent. Customer shall use its best efforts to comply with all applicable theft of service laws. At TDS's request, Customer, or a representative designated by Customer, shall accompany TDS's employees or agents into any part of the Premises for the purpose of installing Equipment. The person signing this Agreement on behalf of Customer represents that he/she is Customer's authorized agent and has full authority to bind Customer to the terms and conditions of this Agreement. If Customer is not the owner of the premises, Customer represents that he/she has obtained all necessary permissions from the owner to enter into this Agreement.
10. **Warranty.** TDS WARRANTS THAT THE SERVICES SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT WITH RESPECT TO THE FOREGOING WARRANTY, TDS IS PROVIDING ALL SERVICES TO THE CUSTOMER "AS IS" AND TDS MAKES NO WARRANTY AS TO THE CONTINUOUS OPERATION OF THE

SERVICE OR ANY SPECIFIC FEATURE OF THE SERVICE. ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE ARE DISCLAIMED. TDS DOES NOT WARRANT THAT THE SERVICES OR RELATED PRODUCTS WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO YOUR COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES ON ANY OF THEM. CONNECTIONS (SYNC-RATES) ARE RATE ADAPTIVE AND MAY BE LOWER DUE TO THE LENGTH AND CONDITION OF THE LINE. ACTUAL THROUGHPUT MAY BE LOWER DUE TO INTERNET CONGESTION, NETWORK UTILIZATION, PROTOCOL OVERHEADS OR OTHER FACTORS, WHICH CAN NOT BE CONTROLLED BY TDS. IN THE EVENT OF A POWER OUTAGE AT CUSTOMER'S LOCATION OR IF CUSTOMER'S BROADBAND SERVICE IS DOWN, SERVICES THAT ARE NOT LINE-POWERED (SUCH AS managedIP) WILL NOT OPERATE AND CUSTOMER WILL NOT HAVE ACCESS TO EMERGENCY SERVICES SUCH AS 911.

11. **Limitation of Liability.** TDS SHALL NOT BE LIABLE IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF THE USE OF THE SERVICE, LOSS OF DATA, CUSTOMER'S INABILITY TO USE THE SERVICE, INTERRUPTIONS OR CLAIMS BY THIRD PARTIES. THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, FOR DISPUTES RELATED TO THE ACCURACY OF INVOICES, THE MAXIMUM CREDIT OR REFUND A CUSTOMER MAY RECEIVE SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO TDS OVER THE MOST RECENT THREE MONTH PERIOD FOR THE SPECIFIC SERVICES IN DISPUTE; FOR ALL OTHER CLAIMS TDS LIMITS LIABILITY RELATED TO THE PROVISION OF SERVICES TO THE AMOUNT PAID BY CUSTOMER IN THE PREVIOUS TWELVE (12) MONTHS FOR SERVICES GIVING RISE TO, OR WHICH ARE THE SUBJECT OF, THE CLAIM WHETHER SUCH CLAIM ALLEGES BREACH OF CONTRACT, OR TORTIOUS CONDUCT INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR ANY OTHER THEORY. TDS SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CUSTOMER FOR ANY OMISSION OR ERROR WITH RESPECT TO CUSTOMER'S TELEPHONE DIRECTORY LISTINGS. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE PROVISION OF SERVICES OR ITS PERFORMANCE MAY BE BROUGHT BY CUSTOMER MORE THAN SIX (6) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.
12. **Default.** An event of default ("Event of Default") shall occur upon the occurrence of all or any one of the following events: (a) the Customer does not pay when due any invoice; (b) the Customer ceases doing business as a going concern; (c) the Customer makes an assignment for the benefit of its creditors or admits in writing to its inability to pay its debts as they become due; (d) the Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under any state insolvency law or the Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (e) the Customer shall default in the performance of any of its obligations to TDS or any assignee arising under this Agreement, or any other agreement between the Customer and TDS and such default is not cured within 30 days of TDS providing notice of same, unless prohibited by relevant federal, state or local law.
13. **Remedies.** Upon the occurrence of an Event of Default, unless prohibited by relevant federal, state or local law, TDS may, at its option and without notice or demand, exercise all or any one or more of the following remedies: (a) declare immediately due and payable all invoices and all other sums due, including termination charges, or to become due hereunder or under any other agreement between the Customer and TDS; (b) terminate all of its obligations arising under this Agreement, and any other agreement between Customer and TDS; (c) enter the premises where any of TDS's equipment is located and repossess all or any part of the equipment; (d) offset any amounts due TDS under this Agreement against any amounts TDS or any of its affiliates owes the Customer (or the Customer's affiliates) under any other agreement; or (e) exercise all other legal and equitable remedies which TDS may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently as permitted by law.
14. **Interruption of Services.** For any interruption of Service that is not due to negligence or non-compliance with any term or condition of this Agreement by Customer or the failure of operation or malfunction of facilities, power or equipment provided by the Customer, Customer will be entitled to a credit against the monthly Recurring Charge for such Service. Service will be deemed to be interrupted from the time TDS receives notice from Customer that the Service is not working until the time the Service is working. Unless provided otherwise by law, credits shall be calculated on the basis of a 30-day month and shall be credited upon Customer request against the monthly Recurring Charge for such Service as follows:
  - First 30 minutes: none
  - 30 minutes to 3 hours: 1/10 day
  - Each additional 3 hour period (or fraction thereof): 1/5 day

If the duration of the outage is more than 24 hours, then the credit shall be the daily pro-rated amount of the Customer's monthly Recurring Charge for the applicable Service for each day thereafter, in an aggregate amount not to exceed the monthly Recurring Charge for such Service. Credits under this provision shall be the Customer's sole remedy and TDS's sole liability for any Service outage.

15. **Support.** The following outlines TDS support boundaries and procedures for TDS Internet connectivity and access.

15.1 **Warranty.** Internet access equipment and/or Polycom<sup>®</sup> telephone sets purchased or leased from TDS is fully supported per the manufacturer's warranty period (individual manufacturer's warranties vary; check specific manufacturer for the warranty period). Extended warranty support programs may be available through TDS. Equipment leased or purchased from third party vendors, including vendors recommended by, are **not** supported by TDS.

15.2 **Boundaries**

15.2.1 Purchased Equipment from TDS – The boundary is the Ethernet port on the router. Please note that the inside wiring between the Network Interface Device and the equipment is not supported.

15.2.2 Customer Provided Equipment – The boundary is the Network Interface Device. When TDS is able to verify circuit integrity the support boundary is met.

15.2.3 NOTE: Firewalls, Virtual Private Networks (VPN) and network management are beyond the support boundaries provided by TDS for dedicated Internet services.

15.3 **Activation**

15.3.1 Equipment Purchased from TDS – Customer is responsible for the configuration of equipment purchased from TDS.

15.3.2 Customer Provided Equipment – Configuration and installation of equipment not purchased or leased from TDS is the Customer's responsibility. TDS will provide the Customer with a list of relevant IP addresses for use in the configuration of the Customer's equipment. However, it is the Customer's responsibility to configure the equipment.

15.4 **Unsupported Routers.** Routers not purchased through TDS are unsupported. **TDS will not provide support services for unsupported routers.**

16. **Insurance.** Each party shall maintain Commercial Workers' Compensation Insurance as required by law and Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence covering personal injury and property damage.

17. **Miscellaneous**

17.1 **Confidentiality:** The parties will hold the terms and conditions of this Agreement in confidence, and will not reveal the same to any person or entity except with the written consent of the other party; to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); as part of either party's standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; or in order to enforce its rights pursuant to this Agreement.

17.2 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State where the Services are performed (without giving effect to conflicts of law).

17.3 **Attorney's Fees and Costs:** In any action by a party to enforce its rights hereunder, the non-prevailing party shall pay the prevailing party's cost and expenses (including reasonable attorney's fees).

17.4 **Extraordinary Circumstances:** TDS shall not be liable for any failure to perform its obligations under this Agreement to the extent such failure is due to "Force Majeure". Force Majeure includes, but is not limited to, acts of God, strike, lockout or other interference with work, war, declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, network or other telecommunications failures, including suppliers, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses and any other cause whether of the kind specified above or otherwise which is not reasonably within the control of TDS.

17.5 **Entire Agreement:** This Agreement, and any Amendments, Addenda, and Statements of Work shall constitute the entire Agreement between Customer and TDS notwithstanding inconsistent or additional terms and conditions in Customer's purchase orders or other documents submitted to TDS. Any and all representations, promises, warranties or statements by TDS's agent(s) that differ in any way from the terms and conditions of this Agreement shall have no force or effect. This Agreement shall at all times be subject to such modifications as the FCC may, from time to time, require under their respective jurisdictions and otherwise, this Agreement may be amended only by a written instrument executed by both parties.

- 17.6 **Severability and Survival of Terms:** Any term or condition of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating any of the remaining terms or conditions of the Agreement. The following provisions shall survive any termination or expiration of this Agreement: Disclaimer of Warranties (in Section 10), Limitation of Liability (Section 11) and the Miscellaneous provisions (Section 17).
- 17.7 **Assignment** This Agreement may be assigned by either party without the consent of the other party. An assignment by TDS shall release TDS from any and all obligations arising after the latter occurrence of the effective date of such assignment and the date Customer is first notified of the assignment or pending assignment. This Agreement shall be automatically assigned by Customer to the transferee in the event of the sale, assignment or transfer of all or any part of the Premises or upon the assignment or transfer of any management contract that may exist for the Premises. Customer shall provide TDS with at least thirty (30) days' prior written notice of any sale, assignment or transfer of Customer's interest in the Premises, including any assignment or transfer of any management agreement existing on the Premises. Such notice shall include the name and address of the prospective transferee and the anticipated effective date of the sale, assignment or transfer. Customer further agrees to provide a copy of this Agreement to any prospective transferee.
- 17.8 **Taxes:** In addition to the payments required hereunder, Customer shall pay all sales, use, transfer and other taxes whether federal, state or local, however designated which are levied or imposed by reason of the transactions contemplated by this Agreement excluding, however, any income taxes on fees paid to TDS by Customer.
- 17.9 **Waiver:** A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.
- 17.10 **Electronic Documents:** TDS hereby gives notice of its right to convert this Agreement to electronic format and retain this Agreement solely in an electronic format. TDS may provide this Agreement in electronic form or may provide a reproduction of this Agreement from its electronic copy in the event of any dispute regarding the rights and obligations of the parties under this Agreement. The parties agree that any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability and shall meet any requirement to provide an original or hard copy.
- 17.11 **Notices:** Any notice to be given by Customer to TDS under this Agreement shall be in writing and shall be delivered personally, sent postage prepaid by U.S. certified mail, or by facsimile with electronic confirmation to the local TDS office or to such other address as TDS may designate in writing. Delivery of any notice shall be effective five days after mailing for U.S. certified mail, on the facsimile confirmation date for facsimile, or on the date delivered for personal delivery.

- If switching to TDS Long Distance, Customer is responsible for cancellation of current long distance carrier service.  
Customer initials \_\_\_\_\_
- If switching to TDS provided data service, Customer is responsible for cancellation of current data service.  
Customer initials \_\_\_\_\_

**Authorization:**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written below.

\_\_\_\_\_  
Youth Center

**Customer Name**

\_\_\_\_\_  
By:

*Signature – Authorized Representative*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**TDS BAJA BROADBAND LLC**

\_\_\_\_\_  
By:

*Signature – Authorized Representative*

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-47**

**EXECUTION OF A COMMERCIAL SERVICE AGREEMENT CONTRACT WITH TDS FOR  
INTERNET SERVICES AT THE LOVINGTON YOUTH CENTER**

**WHEREAS**, the City of Lovington desires to increase the internet connection speeds at the Lovington Youth Center; and

**WHEREAS**, TDS is able to offer fiber internet at the facility for a low cost.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission authorizes the City Manager to execute a Commercial Service Agreement with TDS for internet service at the Lovington Youth Center.

DONE THIS 13<sup>TH</sup> DAY OF JUNE, 2016 at

City of Lovington  
New Mexico

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-48: Inmate Housing  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 3, 2016

**STAFF SUMMARY:**

Resolution 2016-48 will authorize the Mayor to execute the annual agreement to house inmates between the City of Lovington and Lea County.

**FISCAL IMPACT:**

\$65.50 per day, per inmate

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Agreement  
Resolution 2016-48

**RECOMMENDATION:**

Motion to approve Resolution 2016-48

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**AGREEMENT TO HOUSE INMATES**  
**BETWEEN LEA COUNTY**  
**AND CITY OF LOVINGTON**

**FY 2016 – 2017**

**THIS AGREEMENT** is entered into by and between the Lea County Board of Commissioners hereinafter referred to as "Lea County" and the City of Lovington hereinafter referred to as "Lovington".

**RECITALS**

**WHEREAS**, Lovington is in need of a facility for the incarceration, care and maintenance of persons charged with or arrested for violation of Lovington's Ordinances, arrested by Lovington's law enforcement personnel, or arrested by other law enforcement agencies within the jurisdiction of Lovington; and

**WHEREAS**, Lea County owns and operates the Lea County Detention Center ("LCDC") which, from time to time, has vacant bed space; and

**WHEREAS**, Lea County is willing to incarcerate Lovington's inmates on a space available basis.

**NOW, THEREFORE IT IS MUTUALLY AGREED** by the parties as follows:

**1.0 PURPOSE.**

The purpose of this Agreement is to establish the terms and conditions under which Lea County shall accept and detain, on a space available basis, Lovington's inmates which may be delivered to LCDC from time to time for incarceration.

**2.0 TERM**

The term of the contract shall become effective when signed by both parties. The initial term of the agreement is one year. Unless either party provides thirty (30) days written notice to the other party of its intent not to renew the agreement, the agreement will automatically be renewed for one-year period, not to exceed a total of four (4) years.

**3.0 ADULT INMATES HOUSING AND BOARD**

3.1 Lea County Detention Center will house persons taken into legal custody by Lovington at LCDC in Lovington, New Mexico, on a space available basis. The parties agree that Lovington will call Lea County Detention Center for accommodations before bringing any inmate to the facility.

- 3.2 Lovington, together with other municipalities in Lea County, will be given priority over municipalities outside of Lea County and other Counties, but this preference shall not be construed so as to require any inmates already at LCDC to be displaced, or a County inmate to be displaced.
- 3.3 Lovington inmates will be subject to the same rules as other inmates, and will receive comparable treatment and accommodations as provided to other inmates.
- 3.4 On the day release is required by the terms of the order of the Court or by law, a Lovington inmate may be released by LCDC at its regular time of release for other inmates.
- 3.5 Lovington shall provide all transportation for Lovington inmates to and from LCDC in Lovington, New Mexico.

**4.0 CONSIDERATION**

- 4.1 Lovington will pay Lea County the sum of \$65.50 pro rata, from date of incarceration through date of release for housing and board and related services rendered at the center. Municipal Agencies having detainers on an inmate housed at LCDC will not be charged for housing if the inmate is picked up within 12 hours of being notified by LCDC that the inmate is ready for release. After 12 hours the Municipal Agency will be charged as follows:

0 – 12 hours	= \$32.75
Over 12 and through 24 hours	= \$65.50

To summarize, on the day of admission, time will be counted from time of admission until midnight. For the day of discharge, time will be counted from midnight until the time of discharge.

There shall be strict accountability for all funds subject to this agreement.

- 4.2 Lea County shall invoice Lovington on a monthly basis. Invoices shall be paid within 30 days of receipt.
- 4.3 Lea County reserves the right to refuse to accept any inmates from Lovington in the event any invoice remains unpaid for 45 or more days.

**5.0 JUVENILE INMATE HOUSING AND BOARD**

- 5.1 The Lea County Juvenile Detention Center will house juvenile inmates from Lovington at its approved juvenile facility in Lovington, New Mexico on a space available basis. The parties agree that Lovington will call the Lea County Juvenile Detention Center for accommodations before bringing any juvenile inmates to the facility.
- 5.2 Lovington juvenile inmates are subject to the Lea County Juvenile Detention Center rules, which apply equally to all juvenile inmates. Lovington juvenile inmates will have comparable treatment and accommodations as provided to other contract juvenile inmates.

**6.0 REJECTION/RETURN**

- 6.1 The Warden of Lea County Detention Center may have the right to reject any inmate tendered by Lovington, as long as Lovington inmates are evaluated and treated on the same basis as inmates from other contract entities.

**7.0 INMATE INFORMATION**

- 7.1 When submitting an inmate to LCDC, Lovington shall provide the following documentation:
  - 1. Arrest Warrant and Supporting Affidavit
  - 2. Arrest Report
  - 3. Judgment and Sentence Form
  - 4. Release Order
  - 5. Date of Birth
  - 6. Criminal Complaint of other Charging Document

Failure to provide LCDC with legal authority to hold said inmate at the time inmate is brought to the LCDC may result in the refusal of the inmate.

- 7.2 When submitting any juvenile inmate to the Lea County Detention Center, Lovington, shall provide the following documentation:
  - 1. Authorization to hold shall be entered in SARA by the approving authority
  - 2. Medical consent form signed by juvenile’s legal guardian (copy attached)

In addition, Lovington will provide LCDC any information it may have concerning inmates tendered pertaining to medical problems, suicidal tendencies, escape records or tendencies toward violence or disruption.

Failure to provide LCDC with legal authority to hold said inmate at the time inmate is brought to the LCDC may result in the refusal of the inmate.

## **8.0 MEDICAL CARE**

- 8.1 As used herein, "medical care" and "medical treatment" shall include medical, psychiatric and emergency dental treatment, and all prescribed drugs therapy.
- 8.2 LCDC shall not be required to provide medical care to any Lovington inmate housed pursuant to this agreement, except as is provided to other inmates, by its medical staff.
- 8.3 Should medical care become necessary from an outside health care provider, Lovington City Manager, or a person designated in advance by the City Manager or Police Chief shall be contacted. The person contacted shall either secure the release of the inmate from the appropriate authority in a timely manner or undertake management of the inmate's medical problem in a timely manner. Except as provided below, LCDC personnel shall not secure outside medical care for a Lovington inmate unless expressly directed to do so by a person authorized by the City Manager, City Police Chief or person authorized for Lovington to act on its behalf. Lovington is responsible for medical care costs outside of the facility and when Lea County is directed by Lovington to secure medical attention for one of its inmates, Lea County is expressly authorized to direct that Lovington be billed directly by health care providers.
- 8.4 Notwithstanding the above, in an emergency, when treatment is clearly necessary to conserve an inmate's health, Lea County may provide the necessary treatment without prior authority from Lovington, but in such case must notify the appropriate Lovington official as soon as possible thereafter. At such time, medical management of the problem will then be tendered to Lovington. Lea County is expressly authorized to direct health care providers to bill Lovington directly for medical care rendered in these circumstances.

## **9.0 TERMINATION**

- 9.1 This Agreement may be terminated by either party upon thirty (30) days written notice to the other party, by certified mail, return receipt, at the following addresses or such other addresses that may be designated from time to time:

City of Lovington  
City Manager  
P. O. Box 1269  
Lovington, NM 88260

Lea County  
County Manager  
100 N. Main, Suite 4  
Lovington, NM 88260

**10.0 MISCELLANEOUS**

10.1 This Agreement is interpreted according and subject to New Mexico law. Any action to interpret and/or enforce this Agreement shall be brought and maintained in the District Court in and for Lea County, New Mexico.

10.2 This Agreement shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

10.3 This Agreement and any Exhibits thereto constitute the entire agreement and understanding of the parties and all other matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating such matters.

**IN WITNESS WHEREOF**, we have hereunder affixed our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

CITY OF LOVINGTON

BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Gregory H. Fulfer, Chairman

ATTEST: Lovington City Clerk

ATTEST: Pat Chappelle  
Lea County Clerk

By: \_\_\_\_\_

By: \_\_\_\_\_



**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-48**

**EXECUTION OF AN AGREEMENT TO HOUSE INMATES BETWEEN THE CITY AND LEA  
COUNTY**

**WHEREAS**, Lovington is in need of a facility for the incarceration, care, and maintenance of persons charged with or arrested fro violation of Lovington’s Ordinances, arrested by Lovington’s law enforcement personnel, or arrested by other law enforcement agencies within the jurisdiction of Lovington; and

**WHEREAS**, Lea County is owns and operates the Lea County Detention Center and is willing to incarcerate Lovington’s inmates on a space available basis.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission authorizes the Mayor to execute an agreement, attached hereto for reference, with Lea County for the housing of inmates.

DONE THIS 13<sup>TH</sup> DAY OF JUNE, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-49: Banking Services Contract  
DEPARTMENT: Finance  
SUBMITTED BY: Gary Lee Chapman, Finance Director  
DATE SUBMITTED: June 10, 2016

**STAFF SUMMARY:**

Resolution 2016-49 will authorize the Mayor to execute the attached Banking Services Agreement between the City and Lea County State Bank.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-49  
Draft Banking Services Agreement

**RECOMMENDATION:**

Staff are requesting this item to be table due to additional legal modifications being necessary.

Gary Lee Chapman

Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-49**

**EXECUTION OF BANKING SERVICES CONTRACT BETWEEN THE CITY AND LEA COUNTY  
STATE BANK**

**WHEREAS**, the City of Lovington issued RFP # 033116 that solicited proposals for a fiscal agent to handle all banking services for the City; and

**WHEREAS**, Lea County State Bank was awarded this responsibility after submitting a response that was most advantageous to the City of Lovington.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission authorizes the Mayor to execute a Banking Services Contract, attached hereto for reference, between the City of Lovington and Lea County State Bank.

DONE THIS 13<sup>TH</sup> DAY OF JUNE, 2016 at

City of Lovington  
New Mexico

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

**CITY OF LOVINGTON CONTRACT FOR FINANCIAL AND BANKING SERVICES**

This Contract is entered into between City of Lovington, hereinafter referred to as the "City," and "Contractor" described below, collectively the "Parties", to provide services on behalf of City of Lovington.

**Contractor Legal Name:** Lea County State Bank

**Services Summary Description:** Financial and Banking Services

**Initial Period of Performance shall be through:** May 11, 2017

This Contract complies with New Mexico and City procurement requirements as follows:

- RFP #031816; City Commission approval date 04/11/2016

**NOTICES:** All correspondence regarding this contract shall be sent to:

Government: City of Lovington	Contractor: Lea County State Bank
Department: Finance	ATTN: Alfonso Cisneros
ATTN: Gary Lee Chapman	Title: VP Branch Manager
Street: 214 South Love Street	Street: 320 S. Main
City, State, Zip: Lovington, NM 88260	City, State, Zip: Lovington, NM 88260
Phone: 575-396-9304	Phone: 575-397-5156
Fax: 575-396-6328	Fax:
Cell: 707-601-7063	Cell:
Email: gchapman@lovington.org	Email: alfonso.cisneros@lcsb.com

**ARTICLE 1 - SERVICES TO BE PROVIDED:** Contractor shall provide services to the City on matters relating to the contractor's specialized areas of expertise as defined in this Contract and its referenced or incorporated Attachments.

Contractor shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this contract.

**ARTICLE 2 - CONTRACT DOCUMENTS:** The Contract shall be comprised of this contract document and shall also include all Lea County State Bank Proposal documents, including the Contractor's responses, Reference Specifications, Special Conditions, Technical Specifications, Standard Details, any addenda thereto, and all negotiation records, all of which are incorporated herein and made a part of the Contract.

In instances where there exists a conflict between any of the Contract documents described above, this Contract plus attachments hereto, negotiation records, the City's solicitation documents, and the Contractor's response to the solicitation, in that order, shall control the interpretation of the parties' respective rights and obligations.

**ARTICLE 3 - PERIOD OF PERFORMANCE:** The period of performance of this Contract shall commence May 11, 2016 **or date of last signature, whichever is later**, and continue through the Initial Period of Performance date detailed above. Per formal Proposal solicitation by

the City, this Contract may be renewed for up to three (3) additional years, not to exceed a total of four (4) years.

**ARTICLE 4 - PLACE OF PERFORMANCE:** The Contractor shall provide the required services or goods for City of Lovington when and where appropriate or as required by the City.

**ARTICLE 5 - COST AND PAYMENT:** The Contractor shall be paid for services rendered satisfactorily per the negotiated fee(s) and payment schedules incorporated hereto in applicable attachments (the Proposal).

**ARTICLE 6 - AMENDMENTS:** This Contract shall not be altered, changed, or amended except by written instrument signed by both parties.

**ARTICLE 7 - ASSIGNMENT:** The Contractor shall not assign nor delegate specific duties as part of this Contract nor transfer any interest nor assign any claims for money due or to become due under this Contract without the written consent of the City.

**ARTICLE 8 - BINDING EFFECT OF CONTRACT:** Both Parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding upon the administrators, assigns, successors, and transferees of the contracting parties.

**ARTICLE 9 - COMPLIANCE WITH GOVERNING LAW:** This Contract shall be construed in agreement with New Mexico law. The Contractor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Contractor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 (Public Law 99-603) and the Immigration Act of 1990 (Public Law 101-649) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Contract. The Contractor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1967 (Public Law 90-202), as amended; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR Part 80 (relating to race, color, and national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

**ARTICLE 10 - CONFIDENTIAL INFORMATION:** Any confidential information, not subject to disclosure under the Inspection of Public Records Act, given to or developed by the Contractor, its officers, directors, employees, agents, or sub-consultants in the performance of this Contract will be kept confidential and will not be made available to any individual, organization, or other entity by the Contractor without prior written approval of the City.

**ARTICLE 11 - CONFLICT OF INTEREST:** The Contractor warrants that it presently has no interest and shall not acquire any interest during the term of this Contract which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall immediately be brought to the attention of the City and appropriate action acceptable to the City shall be taken. The Contractor's failure to inform the City of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the City.

**ARTICLE 12 - CONFLICTS OF LAW:** If any provision of this contract conflicts with governing federal or state law or City ordinances, then that law or ordinance shall supersede the conflicting provision of this contract.

**ARTICLE 13 - HIPAA COMPLIANCE:** As applicable, the parties agree to comply with the provision of the Health Insurance Portability and Accountability Act of 1996, and related regulations, as amended (“HIPAA”) in the event the Contractor receives patient records or information (Protected Health Information as defined by HIPAA).

**ARTICLE 14 - INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:**

**Non-Governmental Entity** The Contractor shall hold harmless, indemnify and defend the City and its “public employees” as defined in the New Mexico Tort Claims Act, Sections 41- 4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, attorney’s fees, costs or actions of any kind resulting from or related to the Contractor’s intentional acts, errors or omissions in the Contractor’s performance under this contract. The Contractor’s agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract, acts, errors or omissions to act occurring during the term of this contract.

**Governmental Entity:** Neither party shall be responsible for liability incurred as a result of the other party’s acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, 1978 § 41-4-1 et. seq. and its amendments, where applicable.

**ARTICLE 15 - INDEPENDENT CONTRACTOR:** Nothing in this Contract is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Contractor as an agent, representative, or employee of the City for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the City. Contractor is an independent contractor of the City. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the City and shall not bind the City in any respect.

**ARTICLE 16 - INSURANCE:** For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect current Certificates of all insurance as required by the Laws of the State of New Mexico and Federal Government.

**ARTICLE 17 - KEY PERSONNEL:** The Contractor shall identify all key personnel assigned to the performance of this Contract, including name of contact person in the firm authorized to act on behalf of the organization, as well as the nature of organization (individual partnership or corporation, private or public, profit or non-profit). Subcontractors, if any, must be identified in a similar manner.

**ARTICLE 18 - MEDIATION:** In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the City and the Contractor, the Parties agree that prior to filing any court action to enforce the Contract or rights under the Contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience as a mediator. The parties shall mutually agree upon the choice of mediator. In the event the Parties have not agreed to a mediator within three days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Court or other professional association, and the Parties shall use a striking process until a mediator is agreed upon. Each party shall be responsible for their respective mediation costs.

**ARTICLE 19 - MERGER OF PRIOR CONTRACTS:** This Contract incorporates all the conditions, contracts, agreements, and understandings of the Parties concerning the subject matter of this Contract. All such conditions, understandings, and agreements have been merged into this written Contract. No prior condition, contract, agreement, or understanding, verbal or otherwise shall be valid or enforceable unless embodied in the Contract, either explicitly or by reference.

**ARTICLE 20 - NON-APPROPRIATION:** The City's obligation to make payment under the terms of this Contract is contingent upon its appropriation of sufficient funds to make those payments and the NM Department of Finance's (DFA) final approval of the City's budget. If the City does not appropriate sufficient funds or DFA does not approve the City's final budget, this Contract will terminate upon written notice of that effect to the Contractor. The City Board's determination that sufficient funds have not been appropriated, through Board of City Commissioners or DFA action, is firm, binding, and not subject to review.

**ARTICLE 21 - PARAGRAPH HEADINGS:** Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

**ARTICLE 22 - PERSONAL LIABILITY:** No elected or appointed official, employee, servant, agent, or law enforcement officer of the City shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

**ARTICLE 23 - PROCUREMENT CODE:** The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Pursuant to the above, it is unlawful for any Contractor to engage in bribery, offering gratuities with the intent to solicit business, or offering or accepting kickbacks of any kind. All other similar act(s) of bribes, gratuities, and/or kickbacks are likewise prohibited.

**ARTICLE 24 - PROPRIETARY INFORMATION:** All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the City whether the activity for which they are developed is implemented or not. The Contractor shall provide the City with a complete set of all such proprietary information as requested by the City, but no later than the effective termination date of the contract. Contractor is strictly prohibited from reproducing, duplicating or printing any such proprietary information in any format for personal or monetary recognition, use or gain without the advance written permission of the City.

**ARTICLE 25 - RECORD KEEPING AND AUDITS:** The Contractor shall maintain, and make available for inspection all records relating to the services to be provided under this Contract. These records shall be subject to inspection by the City or designated auditor. Pursuant to State of New Mexico General Records Retention requirements, Contractor will retain all original, source and supporting documents and records related to this contract for a minimum of six (6) years after the ending date of this contract.

**ARTICLE 26 - SEVERABILITY:** If any clause or provision of the Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either Party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either Party, the Contract

may be voided and no damages shall accrue to either party.

**ARTICLE 27 - SOVEREIGN IMMUNITY:**

**Non-Governmental Entity:** By entering into this Contract, the City and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

**Governmental Entity:** By entering into this Contract, the City and the Governmental Entity Contractor do not waive sovereign immunity, do not waive any defense and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

**ARTICLE 29 - SUBCONTRACTING:** This Contract is based on the personal skills and reliability of the Contractor as known by the City at the time of execution of this Contract. The Contractor shall not subcontract out any portion of the services to be performed under this Contract without the prior written approval of the City Manager. The written approval shall minimally include disclosure of the name of the individual(s) to be contracted, a statement of the individual(s) qualifications and a justification of the request to subcontract.

**ARTICLE 30 - TERMINATION:** The City may terminate this contract for convenience, in whole or in part, by providing written notice to the Contractor thirty (30) days prior to termination. In the event of contract termination, the Contractor shall be paid for work completed to the date of termination.

- A. Where a Party to this Contract has committed a major breach that is capable of remedy, the Party who is not in breach may serve a written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of two weeks.
- B. The City and Contractor shall have the right, such right being exercised at their absolute discretion, to terminate this Contract, in writing, if a major breach has been committed that cannot be remedied. Further, the Parties may terminate this contract, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

**ARTICLE 31 - THIRD PARTY BENEFICIARY:** It is agreed between the Parties executing this Contract that it is not intended by any of the provisions of this Contract to create on behalf of the public or any member thereof the status of third party beneficiary nor to authorize anyone not a party to the agreement to maintain a suit based upon this Contract.

**ARTICLE 32 - WAIVER:** Any waiver by the City of any breach of any covenant, term, condition, or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**ARTICLE 33 - DUPLICATE ORIGINALS:** This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

**SIGNATURES:**

**IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized representatives.**

**CITY OF LOVINGTON:**

**LEA COUNTY STATE BANK:**

\_\_\_\_\_  
City Manager

\_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

## Proposal for Banking Services for



**RFP #: 031816**

**By: Alfonso Cisneros, 397-5156**

Saul Villarreal, 397-6610  
320 S Main

Lovington, NM 88260

March 16, 2016

Mr. Gary Lee Chapman  
Finance Director  
City of Lovington  
214 South Love  
Lovington, NM 88260

Dear Mr. Chapman,

Enclosed is our Bank's proposal for Financial and Banking Services. We are confident that our experience and qualifications are unmatched in terms of our rich history and commitment to the people of Lea County and the delivery of local customer service.

The Bank's experience in the financial services arena dates back to its original Charter in 1928. Originally chartered as Lea County State Bank of Lovington, it played an important part in the early development of this area. "Dedicated to the people of Lea County, the Bank adopted their pioneer spirit, which would eventually make this part of New Mexico great."

Today we offer a complete array of financial services while providing the Local Hometown Service that our customers expect. In addition to the traditional banking services we also offer ACH payroll, credit cards, Internet access to accounts including bill payment capabilities and much more.

Your accounts will be personally handled by myself Alfonso Cisneros, Lovington Branch Manager. Thank you for allowing Lea County State Bank the opportunity to bid for the City of Lovington's banking services!

Sincerely,

Alfonso Cisneros  
Branch Manager, AVP

**Customer Service Representative:**

Alfonso Cisneros

Direct phone number: 575-397-5156

Branch phone number: 575-396-2825

320 S. Main, Lovington, NM 88260

**Depository Services:**

In-Branch deposits made between the hours of 8:00 AM and 5:30 PM will be posted the same day. While some of our competitors have a deposit cut off time; we post it the same day that you deposit it. Items deposited with the same Federal Reserve Region will be considered collected funds within one (1) business day. Incoming wire transfers will be credited immediately on the same day that they are received.

Funds from all governmental entities shall be credited the same day. Automated Clearinghouse funds will be made available immediately. For incoming wire transfers, an Advice of Credit notification will be mailed to the city.

Our Bank is capable of handling direct deposits for employees' payroll and it is included in our low monthly Cash Management fee of \$24.95 (regardless of the number of employees).

The Bank shall provide blank two-part deposit tickets at our standard cost and fulfilled through our check printing company. (See quote in Appendix A).

Lockable bags are available for a one-time cost of \$25 per bag. (LCSB will provide up to 5 bags free of charge).

The Bank will manage the City's fiscal depository checking accounts and associated "zero-balance" payroll checking account. Other accounts shall be provided as necessary to meet the City of Lovington's needs. The Bank will deliver a monthly bank statement of all the accounts.

**Deposit Corrections:**

The Bank will credit the City's account with the correspondent amounts shown on the deposit tickets. The Bank will notify the city if there is a discrepancy in the cash or coin portion of the deposit and will not process the deposit. All other deposit discrepancies will be processed and the Bank will notify the City in writing. For these adjustments, the Bank will mail a deposit correction notification.

**NSF Services:**

The Bank shall submit all NSF checks once for payments. Once they are determined to be uncollectible they will be immediately forwarded to the City. The City will receive notification by

email for any ACH transactions that are rejected.

**Disbursement Services:**

The Bank shall pay all checks drawn on the City's accounts up to the amount held in the account by the City at the Bank. The bank statement will contain a section with the checks sorted numerically in serial number order. The images of the deposit slips will also be included in the bank statement. The images of all cancelled checks will also be included with the bank statement. At an additional cost, a CD or DVD can be provided by the Bank containing this data in an easy to use format by the 10<sup>th</sup> of the month. However, the information included on the CD/DVD can also be found in the bank's online banking at no additional cost.

**On-Line Banking Services:**

With proper security control and training, the City's Finance Office will have access to the banking information to perform certain transactions via online banking.

These online transaction capabilities include but are not limited to:

- 1) Issue Stop Payments
- 2) Query Individual account balances
- 3) Query individual transactions by amount or by check number.
- 4) Query wire transactions
- 5) Query banking history for at least 90 days

The online banking system will include the capability to establish individual profiles based on a user ID and password. Currently the Bank has to set up the individual access profiles. For greater online banking security, security tokens will be provided to all of the City's online banking users. The Bank is working diligently to give access profile capability to the City's designated Administrator, this is projected to be available by the end of the summer 2016.

**Automated Clearinghouse (ACH Services):**

The Bank will provide a cost effective ACH service for sending and receiving payments, deposits and collections of utility bill accounts. Our ACH services is included in the \$24.95 Cash Management monthly fee.

**Point of Sale Debit/Credit Card Services:**

For credit card merchant services we propose to lower our Bank's standard discount rate to .20%. Based on the merchant statement that was provided; this appears to be the same rate that is currently being charged by ETS Corporation, your current provider.

Your current provider is charging a \$7.50 statement fee. We do not charge a monthly statement fee but we charge a Monthly Support Fee of \$10; which we would lower to \$7.50 per month.

Unfortunately, it doesn't appear that we would be able to reprogram your current merchant terminals to our service. As such, we offer a terminal rental or purchase option. The rental fee is \$30 per terminal or we recommend that you purchase the terminals from us at a cost of \$400 per terminal.

These terminals are chip-enabled VeriFone Vx520s and if purchased from us would have a 1-year warranty from us.

While we would prefer to also provide you with our merchant credit card services, please keep in mind that you may also choose to retain that service with your current provider and have the funds deposited to your LCSB bank account.

**Other Services:**

Additional services may be added in the future by mutual agreement between the City and the Bank and depending on the service may include a cost adjustment.

Our Cash Management Service includes ACH Origination, Bill Pay, Funds Transfers, Payroll Direct Deposit and Positive Pay. All of this is included in our \$24.95 per month Cash Management Fee.

The Positive Pay service is an automated fraud detection tool that matches the account number, check number and dollar amount of each check presented for payment against a list of checks previously authorized and issued by the City.

Online Banking Bill Pay allows the City to pay bills and invoices without the need to write checks, buy stamps or go to the post office. One time payments or recurring payments can be scheduled with ease.

The Bank's Remote Capture allows the City to deposit checks without having to physically deposit the checks at the branch. This service will save time by not having to have personnel leave the office to make a deposit. The cost of this service is \$75 per month and this fee may be offset through the Account Analysis Earnings Credit.

Lea County State Bank offers a Visa Business Card that functions in a similar manner to a purchasing card. Individualized statements for each card are produced on a monthly basis and each card limit can be set separately. Each card can be individually monitored through the internet for daily control and the balance is due in full on a monthly basis. In the event a lapse in payment occurs, our market comparable rate of 12.96% APR would be assessed. Additional fees such as late payment fees of \$19.00 may apply, please see enclosed brochure for full disclosures.

**Other Recommendations:**

In today's low interest rate environment, we recommend that when interest rates begin to rise that the City re-evaluate their account selections with our Bank. When interest rates rise it would probably be sensible to consider setting up an overnight repurchase sweep and thus earn better rates of return on excess cash balances.

In the meantime, we recommend that the City consider opening some Bank Certificates of Deposit (CD). LCSB offers fixed rate CDs that, depending on the term, would provide a better rate of return.

**COLLATERIZATION REQUIREMENTS:**

The Bank will collateralize the city's deposits in accordance with the state's statutory requirements.

Collateral certifications will be mailed to the City of Lovington as required.

**A. Introductory Cover Letter (enclosed)**

**B. Qualifications of Financial Institution**

Lea County State Bank was chartered in Lovington in 1928. We are the only locally (Lea County) owned Bank serving the County. As a locally owned Bank, we support our schools and our employees volunteer in many community organizations.

Our Bank differentiates itself from the competition by providing local banking the way it should be. We are not a branch headquartered in another state; we are headquartered in Lea County and only have offices in Lea County.

As the only locally owned Bank in Lea County, we employ more people in Lea County than any other Bank. We are also committed to Lea County and that is reflected by our sponsorship of the Lea County Fair & Rodeo and our employees' involvement in the United Way of Lea County, the Lovington Chamber of Commerce, Lovington Rotary Club, Lovington EDC and many other organizations. In addition, we support the promotion of Lovington and Lea County by assisting in the publishing of the books: "*Lovington Survivor on the High Plains*" by Gil Hinshaw and "*Lea County New Mexico*" by Lynn C Mauldin.

As a community and locally owned bank we are at the forefront of community responsibility. Lea County State Bank received a satisfactory rating in our most recent CRA exam which is a public record and can be found at: <http://www.ffiec.gov/craratings/default.aspx>

In addition to this enclosed you will find our most recent Statement of Condition as well as the Risk Assessment data from 12/31/2015 which reflects that we are a well-capitalized and highly liquid Bank.

**C. Capability to Provide Services**

The Bank is insured by the Federal Deposit Insurance Corporation (FDIC) and all applicable insurance coverages pertinent to governmental entities will be passed through at **no additional cost**. Deposits in excess of the standard FDIC insurance coverage will be collateralized by pledged securities as required by State of New Mexico law for governmental entities (See enclosed Risk Assessment ratios).

Lea County State Bank is fully capable in providing services to other entities of a similar nature. For many years, we have been the primary banking provider for the City of Hobbs. Over 7 years ago they moved their payroll account to consolidate it with their operating account and they have been very satisfied. Toby Spears, the Finance Director for the City of Hobbs may be contacted for a reference.

**D. Cost for Services Proposal**

The Account Analysis service allows us to analyze each account as an overall relationship for fee purposes. The current account analysis earnings allowance rate as of February, 2015 is 0.05% and our current interest rate is .02%. The earnings allowance can offset some or all of the monthly service fees (see attached business banking products brochure and also see the Estimate Account Analysis Statement). Enclosed you will find "Appendix A" Cost of Services worksheet with the detailed list of the applicable cost per service.

Based on the data provided and an Average Collected balance of \$9,306,200.

**Analysis Estimate:** *Average collected balances in the Bank accounts of \$9,306,200.*

*Earnings Allowance Rate: .05%      Current Interest rate: .02%*

The earnings allowance **earned** would be approximately \$355 to cover and offset most and probably all of the bank's monthly service fees.

The interest earned for the month would be approximately \$153

The Earnings Allowance can offset most of the service charges including stop payments and monthly maintenance fees. However, please note that we have incomplete information as to how many stop payments, wires, coin/currency, returned items, etc. are part of your monthly activity and as such can only provide you with an estimated account analysis.

Based on the current data that we have available as to your account activity transaction levels and average balances; the City of Lovington would not have to pay any monthly maintenance service charges for the deposit accounts.

Also, based on the current low interest rate environment, we recommend that the City focus their Bank selection decision Bank based on account servicing costs and overall customer service. However, since interest paid is also a consideration; please refer to our "Other recommendations" section of this proposal. In this section we provide current and future alternatives to earn higher returns of interest.

A very reasonable \$24.95 Cash Management fee would be assessed monthly but it includes bill pay, online banking, payroll direct deposit and positive pay.

As the only locally owned Bank in Lea County, we aim to meet and exceed our customers' expectations. We aim to keep appropriate teller staffing levels so that our customers are serviced accurately and efficiently.

We also recognize your commitment to your employees and we want to honor that same commitment. Whether your employees bank with us or not, we will cash their hard-earned payroll checks without any additional fees. They will be able to cash their checks in our drive-thru lanes

without having to come in to the office and without being fingerprinted. In addition, we offer a direct deposit checking account, whereby the City's employees can open a personal checking account and not pay any monthly maintenance fees as long as they receive at least one direct deposit to their bank account.

The Earnings Allowance rate is set at the bank's discretion. The rates are variable and may change in accordance with market conditions.

#### **E. Basis upon Which Interest is paid**

The account will be an interest bearing account. The interest rate on the account is 0.02% with an annual percentage yield of 0.02%. The interest rate and annual percentage yield may change. At our discretion, we may change the interest rate on the account weekly. Interest begins to accrue on the business day you deposit non-cash items (for example, checks). Interest will be compounded daily and will be credited to the account monthly.

#### **In Conclusion**

As the only locally owned Bank in Lea County we are committed to meeting and exceeding our customers' expectations. Our experience serving Lea County, since 1928, is unmatched and we are confident that the City will find that Lea County State Bank's proposal is the best selection.

Again, thank you for the opportunity to bid for the City of Lovington's banking services. We hope and look forward to the opportunity to serve your organization. If you have any questions please contact Alfonso Cisneros, Branch Manager of the Lovington Branch at 396-2825.

If this proposal is acceptable, we will require appropriate documentation and signatures from the appropriate personnel authorized to enter into deposit/banking agreements on behalf of the City of Lovington.

Dated this 16<sup>th</sup> day of March 2016.

Lea County State Bank

By: Alfonso Cisneros, Branch Manager

DRAFT

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Award of Grazing Lease  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 6, 2016

**STAFF SUMMARY:**

As directed, staff released a request for bids that would allow for the grazing of grassland within the municipal well field on the east side of Highway 18. The purpose for grazing is to reduce the risk of wildland fire. This is a five year lease with one option to renew.

The individual who is awarded the bid must follow all rules, policies, regulations, and procedures in regards to the municipal well field. In addition, they will be responsible for maintaining all fences, gates and cattleguards in the lease area. The City will provide two water taps with meters and backflow preventers.

Three bids were received and opened on May 9th:

Dale Dunlap: \$4.10 per acre / \$3,075 per year

Derek Norris: \$3.00 per acre / \$2,250 per year

Roy Taylor: \$15.00 per unit / \$4,500 per year

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

Depending on award of bid

**ATTACHMENTS:**

Bid Forms Submitted  
Exhibit A - Aerial of lease area

**RECOMMENDATION:**

Motion to award bid to Roy Taylor for amount specified and direct City Manager and City Attorney to draft and execute the lease agreement.

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager



City of Lovington

Bid Form

Grazing Lease on City Property  
DUE DATE: MAY 9, 2016

NAME OF BIDDER Dale Dyalp

ADDRESS 1400 Tatum Hwy

Lovington NM 88260

TELEPHONE NO. 575-631-4030

EMAIL \_\_\_\_\_

BID:

\$ 4.10 per Acre \$ 3,075<sup>00</sup> per Year

The City of Lovington reserves the right to waive any irregularities and award, or not award, in the best interests of the City. The City is held harmless and is indemnified for the loss and/or misplacement of bid submittals. The bidder is required to utilize this form. Signature is required and reflects agreement, by the bidder, to the terms of this document.

SIGNATURE OF BIDDER 

Mail or deliver to City Hall at 214 S. Love St., Lovington, NM 88260  
Deadline: December 3, 2015 by 10:00 A.M

OPTIONS, EXCEPTIONS, OR VARIATIONS  
CITY OF LOVINGTON, NEW MEXICO

FOR GRAZING LEASE ON CITY PROPERTY

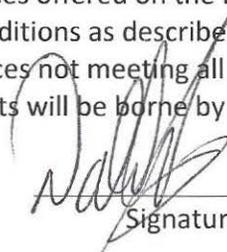
**DUE DATE: MAY 9, 2016 at 10:00 a.m. (MST)**

Please state each and every option, exception, or variation to the specifications (if any) for the service offered. **Please sign below and return with your offer.**

1. THERE **ARE** OPTIONS, EXCEPTIONS OR VARIATIONS. \_\_\_\_\_

Signature

2. THERE **ARE NO** OPTIONS, ETC. LISTED. The services offered on the Request for Proposal meet or exceed all specifications, terms, and conditions as described in said Request for Proposal without exceptions. I understand services not meeting all specifications, terms, and conditions will be rejected and all costs will be borne by the seller.

  
\_\_\_\_\_  
Signature



City of Lovington

Bid Form

Grazing Lease on City Property

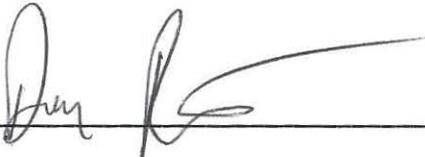
DUE DATE: MAY 9, 2016

NAME OF BIDDER Derek Norris  
ADDRESS 16630 Catchings Rd  
Hobbs N.M. 88242  
TELEPHONE NO. 575-993-2008  
EMAIL norris655@gmail.com

BID:

\$ 3.00 per acre \$ 2250. per Year

The City of Lovington reserves the right to waive any irregularities and award, or not award, in the best interests of the City. The City is held harmless and is indemnified for the loss and/or misplacement of bid submittals. The bidder is required to utilize this form. Signature is required and reflects agreement, by the bidder, to the terms of this document.

SIGNATURE OF BIDDER 

Mail or deliver to City Hall at 214 S. Love St., Lovington, NM 88260  
Deadline: December 3, 2015 by 10:00 A.M

OPTIONS, EXCEPTIONS, OR VARIATIONS  
CITY OF LOVINGTON, NEW MEXICO

FOR GRAZING LEASE ON CITY PROPERTY

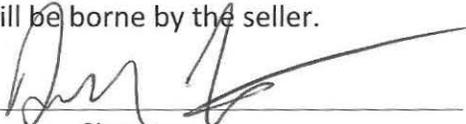
**DUE DATE: MAY 9, 2016 at 10:00 a.m. (MST)**

Please state each and every option, exception, or variation to the specifications (if any) for the service offered. **Please sign below and return with your offer.**

1. THERE **ARE** OPTIONS, EXCEPTIONS OR VARIATIONS. \_\_\_\_\_

Signature

2. THERE **ARE NO** OPTIONS, ETC. LISTED. The services offered on the Request for Proposal meet or exceed all specifications, terms, and conditions as described in said Request for Proposal without exceptions. I understand services not meeting all specifications, terms, and conditions will be rejected and all costs will be borne by the seller.

  
\_\_\_\_\_  
Signature



City of Lovington

Bid Form

Grazing Lease on City Property

DUE DATE: MAY 9, 2016

NAME OF BIDDER Roy A. Taylor

ADDRESS 357 Wilks Rd.

Lovington, NM 88260

TELEPHONE NO. 575-390-4740

EMAIL roytaylor64@hotmail.com

BID:

\$ 15.00 per unit \$ 4500.00 per Year

The City of Lovington reserves the right to waive any irregularities and award, or not award, in the best interests of the City. The City is held harmless and is indemnified for the loss and/or misplacement of bid submittals. The bidder is required to utilize this form. Signature is required and reflects agreement, by the bidder, to the terms of this document.

SIGNATURE OF BIDDER Roy A. Taylor

Mail or deliver to City Hall at 214 S. Love St., Lovington, NM 88260

Deadline: December 3, 2015 by 10:00 A.M

OPTIONS, EXCEPTIONS, OR VARIATIONS  
CITY OF LOVINGTON, NEW MEXICO

FOR GRAZING LEASE ON CITY PROPERTY

DUE DATE: MAY 9, 2016 at 10:00 a.m. (MST)

Please state each and every option, exception, or variation to the specifications (if any) for the service offered. Please sign below and return with your offer.

- ① If, because of wildfire or extreme drought, the grazing lease becomes unsuitable for maintaining cattle, the lease will be re-negotiated or terminated.
- ② If grazing conditions improve drastically, more animal units can be added which would increase the annual lease.

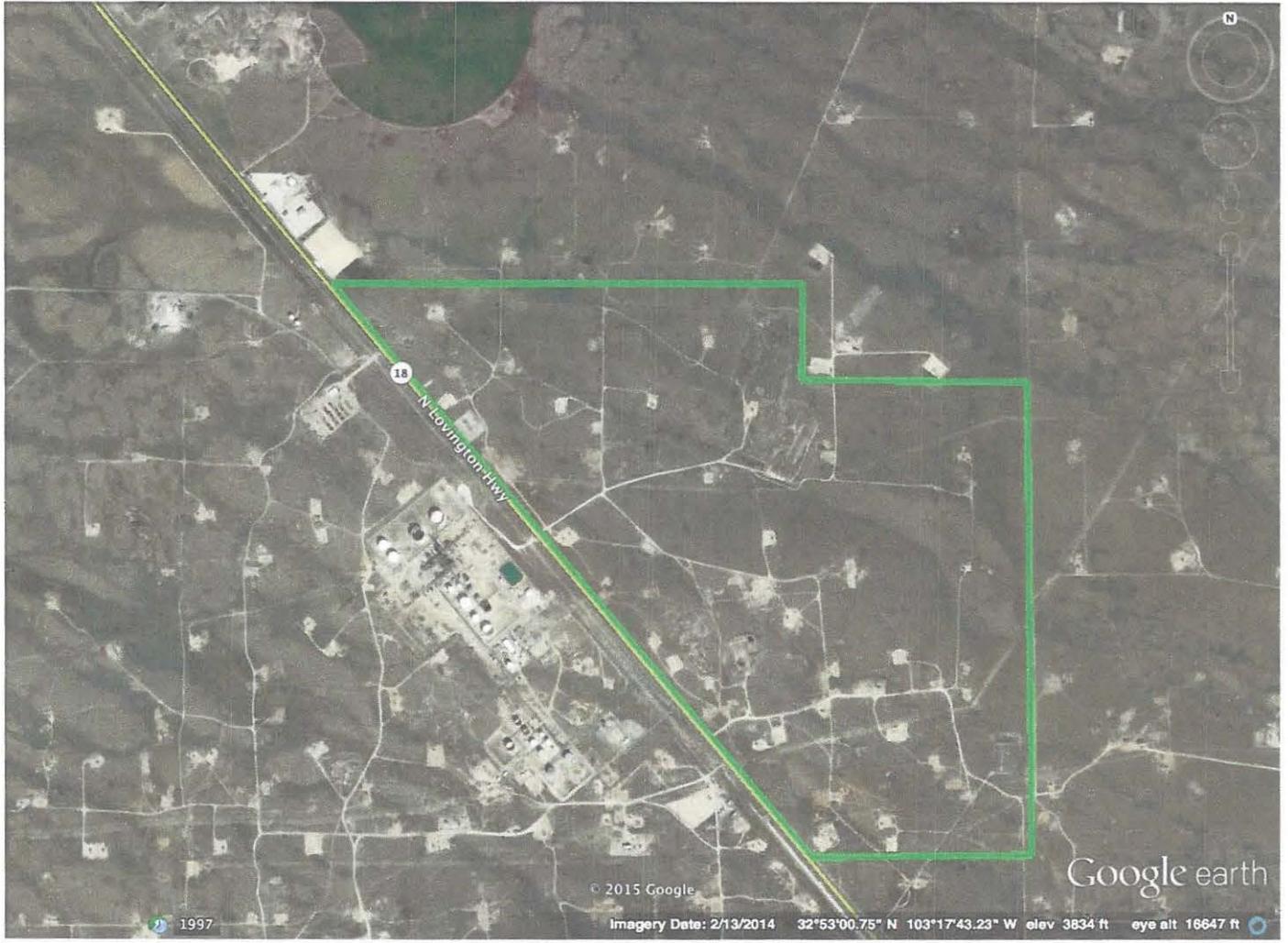
1. THERE ARE OPTIONS, EXCEPTIONS OR VARIATIONS.

Roy A. Taylor  
Signature

2. THERE ARE NO OPTIONS, ETC. LISTED. The services offered on the Request for Proposal meet or exceed all specifications, terms, and conditions as described in said Request for Proposal without exceptions. I understand services not meeting all specifications, terms, and conditions will be rejected and all costs will be borne by the seller.

\_\_\_\_\_  
Signature

**EXHIBIT A**



CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Award of RFP 042316 - Cheer, Tumbling, and Gymnastics Classes  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** June 6, 2016

**STAFF SUMMARY:**

In an effort to increase the availability of activities available at the Youth Center, the City released an RFP that requested offers to teach cheerleading, tumbling, and dance classes at the Lovington Youth Center.

Only one response was received:

LaToya Jackson-Hooks: \$40.00 per student/month (\$5.00 sibling discount)

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

Mrs. Hooks would be employed as an independent contractor with the City. Students would pay their tuition to the City, who would then in turn provide payment to Mrs. Hooks.

The City will also purchase some equipment that will be utilized for this program (approximately \$4,000 this fiscal year)

**ATTACHMENTS:**

Price Proposal

**RECOMMENDATION:**

Motion to award RFP 42316 to LaToya Jackson-Hooks

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**V. Pricing:**

One class a week for each student. Pricing is \$40.00 a month per student. There will be a \$5.00 sibling discount.

**VI. Uniform:**

Shirt, shorts and bow \$40 fee.



Example of uniform. Not exact just a sample style.

**VII. Insurance quote: This number based on 40 kids.**



We Take Fun Seriously

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- [Testimonials](#)
- [About Us](#)
- [Agents](#)
- [Customer Service](#)
- [FAQ](#)
- [Resources](#)
- [Contact Us](#)



## Gymnastics Insurance

Gymnastics Clubs & Cheer Gyms

Phone: 1-800-648-6486  
 Fax: 1-260-459-5940  
 Claims: 1-800-237-2917

Ask us a question/E-mail

**Login/Register**

First time users must register in order to save their Quotes & Applications: [Register here](#)

Email:

Password:

[Forgot password?](#)

**Quote**

1 Eligibility    2 **Rating**    3 Optional Coverages    4 Quote

**Gymnastics Schools / Clubs & Cheer Gyms - Rating**

**Gymnastics/Cheer Operations:**

Estimate the maximum number of gymnastics or cheerleading students/registered members that will be enrolled in your program ([what's this?](#)):

**Age Group - Total Number of Students/Registered Members**

13 & over	<input type="text" value="18"/>	7-12	<input type="text" value="10"/>	5 & 6	<input type="text" value="10"/>	4 & under	<input type="text" value="10"/>
-----------	---------------------------------	------	---------------------------------	-------	---------------------------------	-----------	---------------------------------

**Get Quote/Buy Policy**

Select a Program:

<b>\$1,000,000 Commercial General Liability</b>	<b>Premium</b>
<b>\$150,000 Medical Payments for Participants</b>	
Gymnastics/Cheer Operations	\$1,105.00
<b>Total Annual Premium</b>	<b>\$1,105.00</b>

**VIII. Proposed schedule**

**Possible start up: July, 2016**

**Summer hours will depend on summer youth program, hours that are available. However, willing to conduct classes either morning, afternoon or evening classes.**

	Cheer/Dance	Tumbling
Ages 3-5	Monday: 1:00 – 1:45	Friday: 1:00 to 1:45
Ages 6-9	Tuesday: 7:00 – 7:45	Friday: 4:00 to 4:45
Ages 10-13	Thursday: 7:00 to 7:45	Friday 5:00 to 5:45
Ages 14-18	N/A	Friday: 7:00-7:45

	Cheer/Dance	Tumbling
Ages 3-5	Monday: 12:00-12:45	Friday: 1:00 to 1:45
Ages 6-9	Tuesday: 12:00-12:45	Friday: 4:00 to 4:45
Ages 10-13	Thursday: 12:00-12:45	Friday 5:00 to 5:45
Ages 14-18	N/A	Friday: 7:00-7:45

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Award of RFP 52616: Land Lease  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** June 9, 2016

**STAFF SUMMARY:**

RFP 52616 requested proposals to lease the "Key Energy" property on Highway 18 for a minimum of 5 years, with a one time 5 year renewal option.

RFP's were opened publicly on June 9, 2016. Only one response was received:

Key Energy: \$1,200 per month

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

\$1,200 per month if awarded.

**ATTACHMENTS:**

Key Energy Proposal

**RECOMMENDATION:**

Motion to award RFP 52616 to Key Energy and direct City Manager and City Attorney to execute the lease agreement.

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager



Key Energy Services  
1301 McKinney  
Suite 1800  
Houston, Texas 77010

Larry Brown  
Telephone: 713.651-4344  
Facsimile: 713.651.4559  
[lbrown@keyenergy.com](mailto:lbrown@keyenergy.com)

June 8, 2016

City of Lovington  
Attn: James R. Williams, City Manager  
214 South Love  
Lovington, NM 88260

Re: Proposal # 052616 – Lease of Real Property

Dear Mr. Williams:

Attached is a response to the subject RFP from Key Energy Services, LLC (Key). As you know, we are the current tenant at this property and desire to continue our relationship with the City of Lovington. As the existing tenant, we would like to request an opportunity to match any winning bid which exceeds our proposed monthly rent prior to the decision of a winner. We feel it is in the City's best interest to have continuity of occupancy on the property to minimize any transition efforts on the part of the City. For Key's part, we would prefer to remain in Lovington and avoid the business disruption required by an unanticipated relocation.

If I can clarify any points of our proposal feel free to reach out to me, and I hope we can continue to work with the City as an occupant of this property.

Very truly yours,

A handwritten signature in black ink that reads "Larry E. Brown".

Larry E. Brown  
Senior Director, Facilities

ATTACHMENT A  
LEASE OF REAL PROPERTY  
RFP 52616  
OFFER TO LEASE

Key Energy Services, LLC herein called the Offeror, hereby offer and agree to lease from the City of Lovington, New Mexico, hereinafter called the City, at the price subject to the terms, conditions, reservations, restrictions, and covenants herein stated, and easements, encumbrances, and other matters of record, and to all zoning, building, or other laws or ordinances, the following described property.

The following legal description is written to precisely define the property:

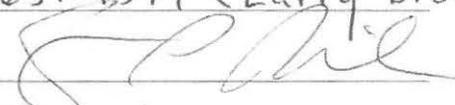
5.00 acres of real property located on Highway 18 that includes an office, shop, and fencing. The property is legally described as Tract A, Lovington Industrial Park Subdivision found in Book 1843, Page 852.

LEASE OFFER AMOUNT: \$ 1,200 /month

Name of Offeror: Key Energy Services, LLC

Address: 1301 McKinney, Suite 1800  
Houston, TX 77010

Telephone Number: 713-651-4344 (Larry Brown - Sr. Dir. Facilities)

Signature of Offeror: 

Title:

Scott Miller, Sr. VP + CAO

ATTACHMENT B  
PROPERTY NARRATIVE  
RFP 052616

Name of Buyer: Key Energy Services, LLC

CATEGORIES:

1. Proposed Use of Property: (Use additional sheets if necessary)

See attached

2. Proposed Property Improvements: (Use additional sheets if necessary)

See attached

3. Timetable for Development and Opening of Business: (Use additional sheets if necessary)

See attached

4. Proposed Job Creation: (Include number and type(s) of jobs created. Use additional sheets if necessary)

See attached

Signature of Offeror:



Date:

6/8/16

ATTACHMENT B  
PROPERTY NARRATIVE  
RFP 52616

Name of Buyer: Key Energy Services, LLC

CATEGORIES:

1. Proposed Use of Property: As the current tenant, Key and its predecessor companies have occupied the property and had a relationship with the City of Lovington for at least the past twenty years. The improvements on the property were constructed by Pride Petroleum Services (a predecessor of Key) and transferred to the City. Over the years Key has used the Lovington location to service our oil and gas customers by providing various well services. Due to the current energy sector slump, Key has transformed our use of the Lovington facility such that today it plays an important role in staging and warehousing equipment and parts critical to operations in our North Permian Basin market. Because of its strategic location in relation to Key's other service facilities, we see Lovington continuing to play an important role in serving our customers. As the market begins to improve, we intend to continually evaluate our footprint in the Permian Basin and hope to resume use of the Lovington facility as a service delivery point to the Eastern New Mexico market.
2. Proposed Property Improvements: Key has no need or plans to make improvements to the property as the current configuration meets our business needs.
3. Timetable for Development and Opening of Business: As the current tenant, our occupation of the property would continue thus there would be no need to set a timetable for additional activities to occur.
4. Proposed Job Creation: Key's current usage of the property would continue. Given the current industry situation, we are unable to make projections regarding job creation and revenue growth related to this property.

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Parks and Recreation Board Appointment  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** June 9, 2016

**STAFF SUMMARY:**

The expiring term of the ETZ Representative on the Lovington Parks and Recreation Board has been advertised. The following individuals have expressed a desire to serve in this position:

Marla Price  
Clint Laughrin  
LeGina Thomas

Staff have verified that all of the above listed individuals reside within the ETZ.

The following individuals did express an interest but do not meet the residency requirement

Tara Duncan  
Lynette Tate

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

**RECOMMENDATION:**

Motion to appoint an individual to serve on the Parks and Recreation Board.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Theatre State EDC Grant  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: June 10, 2016

**STAFF SUMMARY:**

The Lea Community Foundation for the Arts has requested the City apply for an additional \$100,000 grant for the Lea Theatre from the State of New Mexico Economic Development Department. The funds, if awarded the funding, would be used for replacement seating, roof repair, HVAC, and concession area repair.

Staff are requesting direction to apply for the grant or not. If we are awarded the grant, the City would have to adopt an ordinance, sign a Project Participation Agreement, and sign a Guarantee Document.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

\$100,000 in grant funding.

In the event the deliverables are not met, the City would be required to return the funds awarded.

**ATTACHMENTS:**

Updated Financial Plan

**RECOMMENDATION:**

Staff will provide recommendations at the Commission Meeting.

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**Financial Plan - Less Utilities**

ASSUMPTIONS		
	LCFA Proposed	City Proposed
Shows per week	5	5
# Work hours per showing	3	3
# Weeks	52	52
# Operating Days	3	3
# Months	12	12
Adult Tickets per Show	13	13
Senior and Children tickets per show	13	13
Total Attendance per Week	130	136
Adult Admission	\$ 8.00	\$ 8.00
Senior and Children admission	\$ 6.00	\$ 6.00
% Customers purchase concessions	75%	75%
Average sales per concession transaction	\$ 7.00	\$ 7.00
Theatre Manager	\$ 15.00	\$ 15.00
Theatre Crew	\$ 7.50	\$ 7.50
Thatre Crew	\$ 7.50	\$ 7.50
Theatre Crew	\$ 7.50	\$ 7.50
FICA	7.65%	7.65%
Unemployment Insurance	1.86%	1.86%
Workers Compensation Insurance Rate per \$100	\$ 3.00	\$ 3.00
Janitorial Costs per day	\$ -	\$ -
Film Distributor Share	64%	64%

REVENUES		
	LCCA Proposed	City Proposed
Adult Ticket Sales	\$ 27,040.00	\$ 27,040.00
Senior and Children ticket sales	\$ 20,280.00	\$ 20,280.00
Consession Sales	\$ 35,373.00	\$ 37,128.00
Pre-show advertising	\$ 3,000.00	\$ 3,000.00
Subtotal	\$ 85,693.00	\$ 87,448.00

EXPENSES		
	LCCA Proposed	City Proposed
Theatre Manager	-	\$ 15,300.00
Theatre Crew	\$ 5,850.00	\$ 5,850.00
Theatre Crew	\$ 5,850.00	\$ 5,850.00
Theatre Crew	\$ 5,850.00	\$ 5,850.00
FICA	\$ 1,343.00	\$ 3,408.00
Unemployment Tax	\$ 326.00	\$ 544.00
Worker's Compensation	\$ 527.00	\$ 1,469.00
Janitorial Services	\$ 1,100.00	\$ 1,100.00
General Supplies	\$ 1,000.00	\$ 1,000.00
Concession Supplies	\$ 11,791.00	\$ 9,279.00
Electric	\$ -	\$ -
Gas	\$ -	\$ -
Internet	\$ 1,020.00	\$ 1,020.00
Trash	\$ -	\$ -
Telephone	\$ -	\$ -
Film Distributor Costs	\$ 30,285.00	\$ 23,296.00
POS System	\$ 450.00	\$ 450.00
Bank fees and CC processing	\$ 930.00	\$ 930.00
Maintenance	\$ 5,000.00	\$ 5,000.00
Quickbooks/Accounting	\$ 4,200.00	\$ 575.00
Advertising	\$ 4,282.00	\$ 4,282.00
Subtotal	\$ 79,804.00	\$ 85,203.00

	Attendance as of 3/13/16	
LCCA Proposed Average Weekly Attendance	130	
Actual Average Weekly Attendance YTD	109	
Modified Average Weekly Attendance YTD	100	

	Attendance as of 6/9/16	
LCFA Proposed Average Weekly Attendance	130	
Actual Average Weekly Attendance YTD	147	
Modified Average Weekly Attendance YTD	138	

NET INCOME \$ 5,889.00 \$ 2,245.00

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: June 13, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Accounts Payable  
DEPARTMENT: Finance  
SUBMITTED BY: Gary Lee Chapman, Finance Director  
DATE SUBMITTED: June 10, 2016

**STAFF SUMMARY:**

The Finance Department have prepared the Accounts Payable for Commission review and approval.

**FISCAL IMPACT:**

See Accounts Payable Detail

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Accounts Payable Detail

**RECOMMENDATION:**

Motion to approve accounts payable.

Gary Lee Chapman  
Department Head

James R. Williams  
City Manager

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CCMeting - General  
 From 6/1/2016 Through 6/30/2016  
 Dept Code

Vendor Name	Current Balance
A-Tech Air Cond. & Heating	309.76
AlSCO	908.87
America Supply, LLC	615.03
American Medical Group, Inc	251.01
Another Brothers Auto Glass	267.03
Art's D.O.T & Safety Lovington	144.79
Artesia Fire Equipment	5,534.47
ASCO	4,073.69
Assurance Fire, Safety & Train	160.88
Atco International	262.42
Benchmark	114.14
Betsy Ross Flag Girls, Inc.	432.00
Blaine Industrial Supply	1,159.06
BlueTrap Financial, Inc.	3,105.87
Bob's Thriftway	1,180.12
Border States Electric Supply	15,647.52
Bound Tree Medical, LLC	1,535.17
Briana Arambula	42.00
Brodart-McNaughton Inc.	234.00
Brownfield Regional Medical	5.24
C & S Motor Parts Co.	241.14
C E S	23,314.20
California Cont. Supplies, Inc	1,379.52
Caprock Air Cond/Heating	2,130.24
Cardinal Laboratories	704.96
Center Point Large Print	41.34
Certified Laboratories	2,138.32
Cisco Equipment	570.02
City Glass & Mirror	7,975.52

City of Lovington (New)  
Summary A/P Ledger - A/P Summary CCMeting - General  
From 6/1/2016 Through 6/30/2016

Clarke Mosquito Control Prodt	2,913.97
CLS Sewer Equipment Co Inc	1,812.15
Constructors, Inc	1,223.89
Copies, Inc.	968.79
Cowboys Corner	136.00
Culligan Water Conditioning	24.50
Dana Kepner Co.	11,929.76
Demco Inc.	2,480.44
Dept. of Public Safety	110.00
DPC Industries Inc.	737.32
Econo Signs	7,138.48
EJ USA, INC	1,300.00
Elite K-9 Inc	1,966.78
Farmer Brothers Company	259.45
Forrest Tire Co.	867.55
Gale/Cengage Learning	341.85
Galls/Quartermaster	1,474.81
Gebo Credit Corporation	499.55
General Welding Supply	320.00
Grey House Publishing	462.05
H & K Pest Control Co.	471.92
H&S Services	745.00
Haarmeyer Electric	2,893.76
Harris Wholesale Nursery Inc	120.00
Higginbotham-Bartlett Co.	2,077.65
Hobbs News-Sun	60.52
Hoses & More LLC	14.95
Hospital Services Corporation	94.65
Justice Towing and Recovery	135.99
Kaufman's West LLC	985.00

City of Lovington (New)  
Summary A/P Ledger - A/P Summary CCMeting - General  
From 6/1/2016 Through 6/30/2016

Kid's Reference Company, Inc.	164.89
Kleen-Tech Services Corp.	5,489.76
Law Enforcement Targets, Inc	433.00
Lovington Auto Supply	422.96
Lovington Leader	671.09
Lovington Tire Service, Inc.	1,131.47
Lovington Veterinary	2,920.00
Master Printers	1,571.65
Michael's Prescription Corner	1,572.71
MicroMarketing LLC	545.58
Movie Licensing USA	351.12
Mustang Country	4,031.04
New Mexico 811	602.40
New Mexico Jr. College	4,797.00
NM Environment Dept.	200.00
NM WWA Southeast Section	72.00
OCLC, Inc.	220.86
Odessa Pumps & Equipment	26,472.76
P & D Petroleum, Inc	14,114.60
PBMaterials DBA Wallach Concre	1,211.25
Penguin Management, Inc.	564.00
Polydyne Inc.	2,016.00
Porter Lee Corp.	767.00
Pro-Treat Power Equipment	1,103.49
Professional Ambulance Sales	113.97
Red Bud Supply, Inc	8,501.64
Roberts Oil & Lube	213.00
Roy's Mobile Home Service	16,000.00
San Antonio Equipment Repair	685.00
Senior Standing Strong	88.20

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CCMeeting - General  
 From 6/1/2016 Through 6/30/2016

Sensus Metering Systems		3,798.85
Share Corporation		1,475.87
SHOPKO Hometown		164.21
Solar Traffic Systems		1,999.96
Staples Advantage		711.22
Strong Electric		4,497.87
Stryker Sales Corp.		781.51
Sunbird Home Resort Products		372.86
Swatt		226.98
Symbol Arts		50.00
SYSCO West Texas, Inc.		1,394.11
TDS		7.42
Tom's Sharp Shop		100.05
TransUnion Risk and Alternativ		28.25
Triple H Engine Service		14.95
TWS, Inc.		413.56
Tyler Technologies		919.85
U S Food Service		2,313.09
Unifirst Corp.		515.91
US TOPK9 & Lil' Paws		325.00
Valentine Auto Service		909.44
Value Line		1,550.00
Report Balance		<u>238,664.51</u>
AT&T Mobility	Water/Gen-Cellular Phone Bill 5/16	2,657.10
Chevron USA, Inc.	Police-Fuel for Martinez and Porras to albuq for Training	21.15

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CCMeting - General  
 From 6/1/2016 Through 6/30/2016

James Williams	Executive-Reimb for 3 meals/lodging RECON	64.00
Jami Bailey	Youth Center-Reimb for Hobby Lobby/Walmart/County Store	536.74
Jim Trujillo	Handcheck-Trujillo	192.37
Lea County Airport	Finance-Ground Rental yearly Lease May 1 2016-April 30 2017	372.50
Lea County Electric	Water/Gen Electric Bill for 4/16	43,446.67
Lea County Museum	Lodgers tax Musuem 5.27.16	939.39
LEACO	Gen/Water-Internet Bill for May 2016	276.85
Lovington Economic Development	Finance-4th qtr funding 2016	12,500.00
Lowe's	Gen-Supplies on credit card 4/16	432.03
New Mexico Gas Company	Leg-Utility Gas For Lea Theatre April 2016	75.64
New Mexico Gas Company	Gen/Water-Gas Utility Bill 5/16	699.08
NMED Utility Operator Certifi	WasteWater-Certification fee for Silvano/Oscar	60.00

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CCMeeting - General  
 From 6/1/2016 Through 6/30/2016

NMWWA Southwest Section	Water-School training for Gutierrez/Herrera	200.00
P & D Petroleum, Inc	Senior center-Fuel	153.67
Phillips 66 Co.	Police-Fuel on credit Card 5/16	212.82
R & M Sign Design	Special Gas Tax-Full Color Banners for Commercial Street Pro	170.00
Shell Oil Co.	Police-Martinez/Porras to albuq for training fuel 4/16	30.93
Staples	Recreation-Office Supplies	236.97
Staples	Senior Center-Office Supplies	730.10
VerMed	Ambulance-Supplie	63.72
VerMed	Ambulance-Supplies	541.69
Visa	visa 7326 New Travel 4/16 Cemetery/Parks Pesticide Testing	715.00
Visa	Visa 0999 Police 4/16 Vistaprint J Pillow	27.97

City of Lovington (New)  
Summary A/P Ledger - A/P Summary CCMeting - General  
From 6/1/2016 Through 6/30/2016

Visa	Visa 0999 Police 4/16- Wecks/Upper Crust Pizza/The Lodge at Santa Fe for J Herweg	137.20
Visa	Visa 0999 Police 4/16- USPS Neve's Symbol art/Safer NM/Intoxlyzer	129.36
Visa	Visa 9942 JW 4/16 Order from amazon microphone/Cable/Ad apter cord camera wall mount/ect	969.45
Visa	Visa 9942 JW 4/16 order from Apple/ Macbook pro for Commission Chambers/Mini Display to HDMI/Adapter/Cable/ Digital AV	1,463.85
Visa	Visa 9942 JW 4/16 Southwest Airlines J Williams RECON Airfare	429.96
Visa	Visa 9942 JW 4/16 Apple.com Order Thunderbolt Dock	342.08
Visa	Visa 9942 JW 4/16 Telestream.net Wirecast software	549.00

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CCMeting - General  
 From 6/1/2016 Through 6/30/2016

Visa	Visa 9942 JW 4/16 Smartsound shop local Music pack	299.95
Visa	Visa 9942 JW 4/16 Furniture movers from Marshall's	13.96
Visa	Visa 9942 JW 4/16 100 Business Cards for D Reynolds	15.97
Visa	Visa 9942 JW 4/16 Turtle Hole Car Wash	12.00
Visa	Visa 9942 JW 4/16 Rancho Grande Meal for Laserfische Training/Schlotskys J Williams/W Duncan COG mtg	130.92
VISA	Visa 9942 JW 4/16 Membership renewal for ICSC and Registration for J Williams	670.00
Visa 9280 G Chapman	Visa 9280 GC 4/16 Finance Fuel/Rooms and Meals in Ruidoso Gary Chapman/S Lester	223.45

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CCMeeting - General  
 From 6/1/2016 Through 6/30/2016

Visa 9280 G Chapman	Visa 9280 GC 4/16 Finance Lunch Supplies for Free Dump Day	14.67
Visa 9280 G Chapman	Visa 9280 GC 4/16- Finance Aatrix Efile unemp Comp Report	43.20
Visa 9280 G Chapman	Visa 9280 GC 4/16- Cemetery Right of Way Weed Control Exam (2) people	110.00
Visa-0619 Wyatt	Visa 0619 Dell Laptop 15in W/I5 Proessor	2,480.16
Visa -0619 Wyatt	Visa 0619 WD 4/16- Rooms at Best Western pine Springs Inn W Duncan/B Pettigrew/C Ball 2016 Bi Annual Pavement Preservation Workshop	236.51
VISA-0619 Wyatt	VISA 0619 WD 4/16- Meals at The Cornerstone Bakery Café/ Los Cerritos Mexican Kitchen	55.79

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CCMeting - General  
 From 6/1/2016 Through 6/30/2016

VISA-1237 New Travel #3	Visa 1237 New Travel #3 4/16 Police- Meals/Hotel rooms for Martinez/Porras in Albuq Nm	1,275.81
Visa/Fire	Visa 1260 4/16 Fire-5 calculators/Iron	50.40
Vortex Aquatic Structures Intn	Splash pad-Installation Splash pad 85% remaining balance	198,696.50
Waste Management of New Mexico	Solid waste-Polycarts 4/16	12,840.79
Waste Management of New Mexico	Water-Polycarts-3/16 Res \$64387.92 Comm \$58069.90 \$-5408.10c	117,049.72
Waste Management of New Mexico	Solid Waste-Polycarts 4/16 Res \$63978.82 Comm \$56230.81	120,209.63
Windstream	Gen-Phone bill for April 2016	5,168.44
Windstream	Chamber of Commerce-Phone Bill 4/16	184.83
Windstream	EDC-Phone Bill 3/16	188.27
Windstream	WasteWater-Internet for scada 3/16	<u>61.49</u>
Report Total		<u>768,074.26</u>