



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
MARCH 14, 2018
CITY COUNCIL CHAMBERS

AFTERNOON SESSION – 5:00 P.M.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. SALUTE TO THE NEW MEXICO FLAG
4. INVOCATION
5. ROLL CALL
6. APPROVAL OF AGENDA
7. APPROVAL OF CONSENT CALENDAR
8. APPROVAL OF MINUTES: Regular City Council Meeting – February 28, 2018
9. PRESENTATIONS
10. ORGANIZATIONAL SESSION
 - a) APPOINTMENT OF MAYOR PRO-TEM
 - b) APPOINTMENT OF PARLIAMENTARIAN (NO VOTE REQUIRED)
 - c) APPOINTMENT OF CITY COUNCIL COMMITTEES
11. Final Report on 2018 New Mexico Legislative Session. (Mark Duran)
12. CONSENT CALENDAR
 - a) Request for Approval of Professional Services Agreement in the Amount of \$10,000 for City Historian Services; Andrew Lovato. (Debra Garcia y Griego)
 - b) Request for Approval of Equipment Lease Agreement in the Amount of \$350,197.92, for the Managed Print Program for City-Wide Use for 48 Month Commitment; Marlin Business Bank, Approved Leasing Agent for Document Solutions, Inc. (David Kulb)

CITY CLERK'S OFFICE

DATE 3/9/18 TIME 5:00 PM

SERVED BY Melina Byers

RECEIVED BY _____



Agenda

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CITY COUNCIL CHAMBERS

- c) Request for Approval to Publish Notice of Public Hearing on April 11, 2018:
BILL NO. 2018-3. An Ordinance Amending Section 6-5 SFCC 1987 to Provide for the Participation by the Audit Committee in the Selection of the Internal Auditor and Any Contractor Performing Internal Audit Functions; Modifying the Manner in Which Members of the Audit Committee are Appointed; Clarifying and Strengthening the Role of the Audit Committee; and Making Other Such Changes as Necessary. (Councilor Harris) (Kelley Brennan)
- d) Request for Approval of Amended and Restated Deed of Conservation Easement for the Santa Fe Railyard Development Between the City of Santa Fe ("Grantor") and the Santa Fe Conservation Trust ("Grantee"). (Robert Siqueiros) (Postponed on February 28, 2018) (**Postponed to March 28, 2018**)
13. Request for Approval to Allow the Environmental Services Division to Issue a Refund to the State Employees Credit Union for a Duplicate Billing in the Amount of \$72,054.35. (Manuel Sanchez)
14. MATTERS FROM THE CITY MANAGER
15. MATTERS FROM THE CITY ATTORNEY
- EXECUTIVE SESSION
- In Accordance with the New Mexico Open Meetings Act §§10-15-1(H) (7) and (8) NMSA 1978, Discussion Regarding Threatened and Pending Litigation in Which the City of Santa Fe Is or May Become a Participant, Including, Without Limitation, Discussion Regarding Case No. 1:18-cv-00032-KBM-KK, *Santa Fe Alliance for Public Health and Safety; Arthur Firstenberg; Monica Steinhoff v. City of Santa Fe, New Mexico*; Case No. 1:17-cv-00768-SCY-CG, *Rio Grande Foundation v. City of Santa Fe*, and Case No. D-101-CV-2017-03572, *Republican Party of Santa Fe County, Pablo Orlando Baca, Michael Gallegos, Sherry Morrison, Paul Morrison, Loveless Johnson III, Jayne Siler, Edward J. Brown, and Carol J. Wilson v. City of Santa Fe*; and Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights by the City of Santa Fe, Including, without Limitation, Discussion Relating to the Santa Fe University of Art and Design. (Kelley Brennan)
16. MATTERS FROM THE CITY CLERK
Canvass of Election Results – March 6, 2018 Regular Municipal Election.
17. COMMUNICATIONS FROM THE GOVERNING BODY



Agenda

REGULAR MEETING OF
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EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. SALUTE TO THE NEW MEXICO FLAG
- D. INVOCATION
- E. ROLL CALL
- F. PETITIONS FROM THE FLOOR
- G. APPOINTMENTS
- H. PUBLIC HEARINGS:
 - 1) **Case No. 2017-91.** Appeal of William L. Harper, Alma Waldo, Russell Waldo, and the Las Brisas de Santa Fe Condominium Association from the September 5, 2017, Decision of the Board of Adjustment to Grant a Request by the Museum of New Mexico Foundation for a Variance From City Code Section 14-8.4(J)(3) (Buffer for Nonresidential Development Abutting Residential). (Rick Word) (Postponed on February 14, 2018) **(Postponed to March 28, 2018)**
- I. ADJOURN

Pursuant to the Governing Body Procedural Rules, in the event any agenda items have not been considered prior to 11:30 p.m. such items shall be postponed to a subsequent meeting, provided that the date, time and place of such meeting is specified at the time of postponement.

NOTE: New Mexico law requires the following administrative procedures be followed when conducting “quasi-judicial” hearings. In a “quasi-judicial” hearing all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross-examination. Witnesses have the right to have an attorney present at the hearing.

Persons with disabilities in need of accommodations, contact the City Clerk’s office at 955-6521, five (5) working days prior to meeting date.

**SANTA FE CITY COUNCIL
MARCH 14, 2018
SUMMARY INDEX**

ITEM	ACTION	PAGES
AFTERNOON SESSION:		
1. CALL TO ORDER	Began at 5:02	1
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3. SALUTE TO THE NEW MEXICO FLAG	Recited	1
4. INVOCATION	Led by Councilor Ives	1
5. ROLL CALL	Quorum present	1
6. APPROVAL OF AGENDA	Approved as published	1
7. APPROVAL OF CONSENT CALENDAR	Approved as published	2
8. APPROVAL OF MINUTES - Regular City Council Meeting on February 28, 2018	Approved as presented	2
9. PRESENTATIONS	None	2
10. ORGANIZATIONAL SESSION		
a) APPOINTMENT OF MAYOR PRO-TEM	Approved Councilor Lindell	2
b) APPOINTMENT OF PARLIAMENTARIAN	Appointed Councilor Ives	3
c) APPOINTMENT OF CITY COUNCIL COMMITTEES		
1. FINANCE COMMITTEE	Appointed Abeyta, Lindell, Romero-Wirth, Harris	3
2. PUBLIC UTILITIES COMMITTEE	Appointed Rivera, Romero-Wirth, Ives, Villarreal, Vigil Coppler	3
3. PUBLIC WORKS/CIP & LAND USE	Appointed Ives, Abeyta, Rivera, Vigil Coppler, Harris, Villarreal	3-4
4. BICYCLE & TRAIL ADVISORY COMMITTEE	Appointed Councilor Vigil Coppler, Chair	4
5. COMMUNITY DEVELOPMENT COMMITTEE	Appointed Councilor Villarreal, Chair	4
6. ECONOMIC DEVELOPMENT ADVISORY	Appointed Councilor Abeyta, Chair	4
7. ECONOMIC DEVELOPMENT REVIEW	Appointed Councilor Lindell Chair	5
8. MAYOR'S YOUTH ADVISORY BOARD	Appointed Councilor Villarreal, Liaison	5
9. PUBLIC SAFETY COMMITTEE	Appointed Councilor Rivera, Chair	5
10. WATER CONSERVATION COMMITTEE	Appointed Councilor Romero-Wirth, Chair	5
11. BUCKMAN DIRECT DIVERSION BOARD	Appointed Ives, Harris, Vigil Coppler	6
12. NORTH CENTRAL RTD BOARD	Appointed Councilor Romero-Wirth	6
13. REGIONAL JUVENILE JUSTICE BOARD	Appointed Councilor Abeyta	6

14. METROPOLITAN TRANSPORTATION POLICY BOARD	Appointed Lindell, Abeyta, Rivera, Romero-Wirth	6
15. SOLID WASTE MANAGEMENT JOINT POWERS BOARD	Appointed Harris, Vigil Coppler, Villarreal	7
16. REGIONAL COALITION OF LANL COMMUNITIES	Appointed Councilor Ives, Alternate	7
11. FINAL REPORT ON 2018 NEW MEXICO LEGISLATIVE SESSION	Reported by Mark Duran	7-9
12. CONSENT CALENDAR LISTING		
a) Request for Approval of Professional Services Agreement in the Amount of \$10,000 for City Historian Services; Andrew Lovato	Approved on Consent	9
b) Request for Approval of Equipment Lease Agreement in the Amount of \$350,197.92, for the Managed Print Program for City-Wide Use for 48 Month Commitment; Marlin Business Bank, Approved Leasing Agent for Document Solutions, Inc.	Approved on Consent	
c) Request for Approval to Publish Notice of Public Hearing on April 11, 2018: BILL NO. 2018-3. An Ordinance Amending Section 6-5 SFCC 1987 to Provide for the Participation by the Audit Committee in the Selection of the Internal Auditor and Any Contractor Performing Internal Audit Functions; Modifying the Manner in Which Members of the Audit Committee are Appointed; Clarifying and Strengthening the Role of the Audit Committee; and Making Other Such Changes as Necessary.	Approved on Consent	10
d) Request for Approval of Amended and Restated Deed of Conservation Easement for the Santa Fe Railyard Development Between the City of Santa Fe ("Grantor") and the Santa Fe Conservation Trust ("Grantee").(Postponed to March 28, 2018)	Postponed to March 28, 2018	10
13. REQUEST FOR APPROVAL TO ALLOW THE ENVIRONMENTAL SERVICES DIVISION TO ISSUE A REFUND TO THE STATE EMPLOYEES CREDIT UNION FOR A DUPLICATE BILLING IN THE AMOUNT OF \$72,054.35	Approved	10-11
14. MATTERS FROM THE CITY MANAGER	None	11
15. MATTERS FROM THE CITY ATTORNEY	Recommended Executive Session	11
EXECUTIVE SESSION	Entered Executive Session at 5:46 pm	11-12

EVENING SESSION - 7:00 P.M.

MOTION TO RETURN TO OPEN SESSION	Approved	12
A. CALL TO ORDER	Reconvened at 7:00	
F. PETITIONS FROM THE FLOOR	18 Petitions were made	13-20
G. APPOINTMENTS	None	20
H. PUBLIC HEARINGS	None	20
16. MATTERS FROM THE CITY CLERK	Report on Canvass after Election	21-22
17. COMMUNICATIONS FROM THE GOVERNING BODY	Information and Discussion	22-24
I. ADJOURNMENT	Adjourned at 8:07p.m.	24-25

**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
March 14, 2018**

AFTERNOON SESSION

1. CALL TO ORDER AND ROLL CALL

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor Alan Webber, on Wednesday, March 14, 2018, at approximately 5:02 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance, Salute to the New Mexico flag, and the Invocation, roll call indicated the presence of a quorum, as follows:

Members Present

Mayor Alan Webber
Councilor Signe I. Lindell
Councilor Roman "Tiger" Abeyta
Councilor JoAnne Vigil Coppler
Councilor Mike Harris
Councilor Peter N. Ives
Councilor Christopher M. Rivera
Councilor Renee D. Villarreal
Councilor Carol Romero-Wirth

Others Attending

Brian K. Snyder, City Manager
Kelley A. Brennan, City Attorney
Yolanda Y. Vigil, City Clerk
Carl Boaz, Council Stenographer

6. APPROVAL OF AGENDA

MOTION: Councilor Lindell moved, seconded by Councilor Harris, to approve the agenda, as published.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Romero-Wirth, Rivera, and Villarreal voting in favor of the motion and none voting against.

7. APPROVAL OF CONSENT CALENDAR

Councilor Coppler asked for discussion on the item regarding state employee's reimbursement

Ms. Vigil clarified that item is on the discussion agenda already.

MOTION: Councilor Lindell moved, seconded by Councilor Abeyta, to approve the Consent Calendar, as published.

VOTE: The motion was approved on the following Roll Call vote:

For: Mayor Webber, Councilor Abeyta, Councilor Coppler, Councilor Harris, Councilor Ives, Councilor Lindell, Councilor Romero-Wirth, Councilor Rivera, and Councilor Villarreal.

Against: None.

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – FEBRUARY 28, 2018.

MOTION: Councilor Ives moved, seconded by Councilor Lindell, to approve the minutes of the Regular City Council Meeting of February 28, 2017, as presented.

VOTE: The motion was approved on a voice vote with Mayor Webber, and Councilors Abeyta, Coppler, Harris, Lindell, Romero-Wirth, Maestas, Rivera, and Villarreal voting in favor of the motion and none voting against.

9. PRESENTATIONS

There were no presentations.

10. ORGANIZATIONAL SESSION

a) APPOINTMENT OF MAYOR PRO-TEM

Mayor Webber appointed Councilor Lindell to serve as Mayor Pro-Tem.

MOTION: Councilor Ives moved, seconded by Councilor Abeyta, to approve the appointment of Councilor Lindell as Mayor Pro-Tem.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

b) APPOINTMENT OF PARLIAMENTARIAN (NO VOTE REQUIRED)

Mayor Webber appointed Councilor Ives as Parliamentarian.

c) APPOINTMENT OF CITY COUNCIL COMMITTEES

Mayor Webber made the following appointments to City Council Committees:

1) FINANCE COMMITTEE:

Councilor Abeyta, Chair,
Councilor Rivera,
Councilor Lindell,
Councilor Romero-Wirth,
Councilor Harris.

MOTION: Councilor Lindell moved, seconded by Councilor Harris, to approve these appointments.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

2) PUBLIC UTILITIES COMMITTEE:

Councilor Rivera, Chair,
Councilor Romero-Wirth,
Councilor Ives,
Councilor Villarreal,
Councilor Vigil Coppler

MOTION: Councilor Abeyta moved, seconded by Councilor Lindell, to approve these appointments.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

3) PUBLIC WORKS/CIP & LAND USE COMMITTEE:

Councilor Ives,
Councilor Vigil Coppler,
Councilor Abeyta.

Councilor Harris,
Councilor Villarreal.

MOTION: Councilor Lindell moved, seconded by Councilor Rivera, to approve these appointments.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

4) BICYCLE AND TRAILS ADVISORY COMMITTEE

Councilor Vigil Coppler, Chair.

MOTION: Councilor Ives moved, seconded by Councilor Abeyta, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

5) COMMUNITY DEVELOPMENT COMMISSION

Councilor Villarreal, Chair

MOTION: Councilor Rivera moved, seconded by Councilor Ives, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

6) ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Councilor Abeyta, Chair

MOTION: Councilor Rivera moved, seconded by Councilor Lindell, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

7) ECONOMIC DEVELOPMENT REVIEW SUGCOMMITTEE

Councilor Lindell, Chair

MOTION: Councilor Rivera moved, seconded by Councilor Vigil Coppler, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

8) MAYOR'S YOUTH ADVISORY BOARD

Councilor Villarreal, City Council Liaison

MOTION: Councilor Lindell moved, seconded by Councilor Romero-Wirth, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

9) PUBLIC SAFETY COMMITTEE

Councilor Rivera, Chair

MOTION: Councilor Harris moved, seconded by Councilor Villarreal, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

10) WATER CONSERVATION COMMITTEE

Councilor Romero-Wirth, Chair

MOTION: Councilor Ives moved, seconded by Councilor Abeyta, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

Mayor Webber made the following appointments to Joint Boards:

11) BUCKMAN DIRECT DIVERSION BOARD:

Councilor Ives,
Councilor Harris,
Councilor Vigil Coppler, Alternate

MOTION: Councilor Lindell moved, seconded by Councilor Harris, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

12) NORTH CENTRAL REGIONAL TRANSIT DISTRICT BOARD

Councilor Romero-Wirth

MOTION: Councilor Lindell moved, seconded by Councilor Ives, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

13) REGIONAL JUVENILE JUSTICE BOARD

Councilor Abeyta

MOTION: Councilor Lindell moved, seconded by Councilor Harris, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

14) SANTA FE METROPOLITAN TRANSPORTATION POLICY BOARD

Councilor Lindell,
Councilor Rivera,
Councilor Romero-Wirth,
Councilor Abeyta, Alternate

MOTION: Councilor Lindell moved, seconded by Councilor Ives, to approve these appointments.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

15) SOLID WASTE MANAGEMENT JOINT POWERS BOARD

Councilor Harris,
Councilor Vigil Coppler
Councilor Villarreal

MOTION: Councilor Lindell moved, Seconded by Councilor Ives, to approve these appointments.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

16) REGIONAL COALITION OF LANL COMMUNITIES

Councilor Ives, Alternate

MOTION: Councilor Lindell moved, seconded by Councilor Villarreal, to approve this appointment.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

[End of Appointments]

11. Final Report on 2018 New Mexico Legislative Session. (Mark Duran)

Mr. Duran presented the Legislative Report. He said he was already a little nervous and then saw his would be the first presentation after formation of the Council, so he asked to be given a little indulgence. He looked forward to working with the new Mayor and new Councilors as well as the continuing Councilors.

[A copy of Mr. Duran's report is attached to these minutes as Exhibit 1.]

He summarized the Session overall, it was fair to say the session has concluded and the Governor's veto period has ended. It was a smooth Legislative Session. It was the Governor's last legislative session; it was a financial session and not a statutory session. This session had money in stark contrast to year before when the State was in financial straits all the way to having \$300 million of new money for appropriations, although not all of it was available because they had to fill up the deep cuts from 2017. One thing he tracks closely is securing no change to the hold harmless payments the City of Santa

Fe gets. He hoped everyone got his report about it. Further, there were some positives - a couple of projects that are current local priorities or past priorities that received funding. There were \$225,000 for the New Mexico home-grown food legislation. He worked with Councilor Villarreal on that.

He gave kudos to Senator Nancy Rodriguez, who four years ago began pushing the LEAD program (Law Enforcement Assistance Diversion) that got some funding then. She has pursued it every year since, and this year received \$400,000 in this session for that project.

He pointed out, not directly for the City of Santa Fe, but because of positive financial situation, state employees received a 2% compensation increase and that is important for Santa Fe because many of those state employees live in the City and enhances the local economy.

Last session had no capital outlay in order to fill holes in the operational budget. This year, there were two sources for capital outlay: Severance Tax Bonds and General Obligation Bond money.

Santa Fe traditionally goes for senior citizen projects from GO Bond source and city-wide priorities from severance tax bonds. He was happy to report that the #1 priority, \$1.5 million for the airport was fully funded. The way it got funded was that we proposed to legislature that the Municipal airport was actually a state-wide project. There were some anxious moments on that. We put it in statewide and then immediately went to ask local representatives to use their local monies to fund our district priorities. The result was another \$500,000 for local district priorities.

The anxious part came in the discussion with the Governor on HB 306 capital outlay bill which included our state-wide priority and at various points, had the airport at zero; some at half, fully funded, back to zero and we couldn't change the local priorities So anxious moments, but it worked out with \$2 million received in capital outlay, in addition to \$625,000 for operations. The Governor did not veto any of them.

Statutory legislation - we worked on various pieces and worked with several Councilors on local legislation, including the Local Election Act, HB98, which passed and was signed by the Governor and we carved cities out and especially the City of Santa Fe out. That bill said that the Community Colleges, School Boards, some others will be moved to November. Santa Fe municipal elections would be kept in March and the Council could choose to move it to November if desired.

The PNM legislation eventually died in committee. The Small Cell Tower legislation, was first opposed and then went to neutral with amendments proposed and it eventually passed.

Airport Landing fees to allow us to charge a fee for any planes landing at our airport. The Governor vetoed that.

Other legislation we tracked is in the report and he would answer questions with one caveat that if he couldn't answer a question, he would follow up.

He emphasized that he could not have done this without the tremendous work of the Santa Fe delegation: Speaker of the House Egoff, Senator Wirth, Representatives Carl Trujillo, Jim Trujillo, and Linda

Trujillo. Senator Nancy Rodriguez and Senator Liz Stefanics were excellent, dedicated Santa Fe legislative delegation. He thanked all of them. He also thanked Staff members. Former Mayor Gonzales was always active in legislation. All the Councilors and former Councilors were very involved. Thank you for all who made it successful.

Councilor Ives asked Mr. Duran about the legislation to ensure the new LANL contractor would be subject to GRT. It was vetoed by the Governor and could result in a potential hole of about \$50 million annually by some estimates.

Mr. Duran said there was much discussion on who is responsible and who is running the lab.

Councilor Ives said if there is more information, he would get with Mr. Duran.

Councilor Rivera thanked him for all his hard work and, based on what we received, was very successful. It helps to have familiar face representing us there and that Mr. Duran keeps us updated via email on what is happening and how it is all working. Thank you very much.

Councilor Harris echoed Councilor Rivera' comments. This is the first time he had to work with Mr. Duran on the airport landing fees and when he called Mr. Duran, he responded right away. He asked if the landing fee received deep support.

Mr. Duran agreed it did. He is still trying to get a debrief why it got vetoed. It had not only strong legislative support but also support from DOT entities. It gets confusing and was a head scratcher for him why that got pocket vetoed. We do want to know what revenues we can count on at the airport. I think it will come up again in the 60-day session.

Councilor Villarreal thank Mr. Duran for being proactive in communicating what is happening. One correction for capital outlay. The Harrison Road lighting sidewalks is District 1. She was happy to see we got at least a little bit to start that project. She was curious to know for SB 23 for Local Government Planning Fund - how that specifically helps the City of Santa Fe.

Mr. Duran said that is going to allow New Mexico Finance Authority to be fiscal agent and receive applications to distribute grant money to municipalities for planning projects.

There were no other questions. Mayor Webber thanked Mr. Duran for his hard work and for the report.

12. CONSENT CALENDAR LISTING

- a) **Request for Approval of Professional Services Agreement in the Amount of \$10,000 for City Historian Services; Andrew Lovato. (Debra Garcia y Griego)**
- b) **Request for Approval of Equipment Lease Agreement in the Amount of \$350,197.92, for the Managed Print Program for City-Wide Use for 48 Month Commitment; Marlin**

Business Bank, Approved Leasing Agent for Document Solutions, Inc. (David Kulb)

- c) **Request for Approval to Publish Notice of Public Hearing on April 11, 2018: BILL NO. 2018-3. An Ordinance Amending Section 6-5 SFCC 1987 to Provide for the Participation by the Audit Committee in the Selection of the Internal Auditor and Any Contractor Performing Internal Audit Functions; Modifying the Manner in Which Members of the Audit Committee are Appointed; Clarifying and Strengthening the Role of the Audit Committee; and Making Other Such Changes as Necessary. (Councilor Harris) (Kelley Brennan)**
- d) **Request for Approval of Amended and Restated Deed of Conservation Easement for the Santa Fe Railyard Development Between the City of Santa Fe ("Grantor") and the Santa Fe Conservation Trust ("Grantee"). (Robert Siqueiros) (Postponed on February 28, 2018) (Postponed to March 28, 2018)**

[End of Consent Calendar]

13. REQUEST FOR APPROVAL TO ALLOW THE ENVIRONMENTAL SERVICES DIVISION TO ISSUE A REFUND TO THE STATE EMPLOYEES CREDIT UNION FOR A DUPLICATE BILLING IN THE AMOUNT OF \$72,054.35. (MANUEL SANCHEZ)

Councilor Coppler recused herself from consideration of this matter because she is on the State Employees Credit Union Board. She left the room.

Mr. Sanchez said we recently were contacted by them for double billing. There were concerns with illegal dumping in what they thought was their dumpster. Upon further investigation, there are five accounts on the property and three had dumpsters being billed. There were actually only two dumpsters on site. We contacted both State Employees Credit Union and Southwest Stern Plaza and found the Southwest Plaza had an agreement with State Employees Credit Union as well as other tenants on the property to use that one dumpster. The agreement was established in August 2003 so there are 15 years of double billing.

Mr. Sanchez said they spoke with the representatives and found out what was going on and came to the conclusion that we need to refund money to the State Employees Credit Union. Currently, the billing system doesn't give us the functionality to assign container numbers to each service address. The new billing system will allow for multiple dumpsters to a particular service address. So we are now numbering all dumpsters to make sure it does not reoccur.

Councilor Ives asked Ms. Brennan about the statute of limitations which is 6 years, and this looks back 15 years. He asked what the City policy is in this regard.

Ms. Brennan said she couldn't answer that question now. She assumed one of the attorney's in the office was consulted about it.

Councilor Rivera thanked Mr. Sanchez for bringing it forward and proactively looking to make sure it is not happening elsewhere. He asked, since the system doesn't have the capacity to give refunds, if the City could give them credit for the amount they owed.

Mr. Sanchez said that was offered but the Credit Union requested a check.

MOTION: Councilor Rivera moved, seconded by Councilor Lindell, to approve this request.

DISCUSSION ON THE MOTION: Mayor Webber noted as Councilor Rivera said, it is hard to correct mistakes and the only thing worse is trying to hide it. There is a term for this. It is called service recovery - to make it right as quickly as possible and rebuild trust. It was a mistake and is being corrected.

VOTE: The motion was approved on the following Roll Call vote:

For: Mayor Webber, Councilor Abeyta, Councilor Vigil Coppler, Councilor Harris, Councilor Lindell, Councilor Romero-Wirth, Councilor Ives, Councilor Rivera, and Councilor Villarreal.

Against: None.

Recused: Councilor Vigil Coppler

Councilor Vigil Coppler returned to the bench after the vote was taken.

14. **MATTERS FROM THE CITY MANAGER**

There were no matters from the City Manager.

15. **MATTERS FROM THE CITY ATTORNEY**

Ms. Brennan recommended the Governing Body go into executive session in accordance with the Open Meetings Act, to discuss the matters listed on the agenda.

EXECUTIVE SESSION

In Accordance with the New Mexico Open Meetings Act §§10-15-1(H) (7) and (8) NMSA 1978, Discussion Regarding Threatened and Pending Litigation in Which the City of Santa Fe Is or May Become a Participant, Including, Without Limitation, Discussion Regarding Case No. 1:18-cv-00032-KBM-KK, *Santa Fe Alliance for Public Health and Safety; Arthur Firstenberg; Monica Steinhoff v. City of Santa Fe, New Mexico*; Case No. 1:17-cv-00768-SCY-CG, *Rio Grande Foundation v. City of Santa Fe*, and Case No. D-101-CV-2017-03572, *Republican Party of Santa Fe County, Pablo Orlando Baca, Michael Gallegos, Sherry Morrison, Paul Morrison, Loveless Johnson III, Jayne Siler, Edward J. Brown, and Carol J. Wilson v. City of Santa Fe*; and Discussion of the Purchase, Acquisition or Disposal of Real Property or

Water Rights by the City of Santa Fe, Including, without Limitation, Discussion Relating to the Santa Fe University of Art and Design. (Kelley Brennan)

MOTION: Councilor Rivera moved, seconded by Councilor Lindell, that the Council go into Executive Session to discuss the matters listed on the Agenda in accordance with the recommendation of the City Attorney.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Romero-Wirth, Councilor Harris, Councilor Ives, Councilor Lindell, Councilor Rivera, Councilor Abeyta, Councilor Vigil Coppler, Councilor Villarreal, and Mayor Webber.

Against: None.

The Governing Body went into Executive Session at 5:36 p.m.

The Governing Body did not return to open session until the beginning of the Evening Session. The remaining items from the Afternoon Session were tabled until the end of the agenda.

END OF AFTERNOON AGENDA AT APPROXIMATELY 5:36 P.M.

EVENING SESSION

MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION: At 7:00 p.m. Councilor Rivera moved, seconded by Councilor Harris, that the Governing Body come out of Executive Session and stating for the record that the discussion in Executive Session was limited to the matters noted on the agenda.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, Councilor Vigil Coppler, Councilor Ives, Councilor Abeyta, Councilor Harris, Councilor Villarreal, Mayor Webber.

Against: None.

MOTION: Councilor Ives moved, seconded by Councilor Villarreal, to postpone the balance of the afternoon session agenda until the end of the evening session move directly to Petitions from the Floor.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Vigil Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

A. CALL TO ORDER

The Evening Session was called to order by Mayor Webber, at approximately 7:00 p.m. with the following members present:

Members Present

Mayor Alan Webber
Councilor Roman Abeyta
Councilor JoAnne Vigil Coppler
Councilor Mike Harris
Councilor Peter N. Ives
Councilor Signe I. Lindell
Councilor Carol Romero-Wirth
Councilor Christopher M. Rivera
Councilor Renee Villarreal

Others Attending

Brian K. Snyder, City Manager
Kelley Brennan, City Attorney
Yolanda Y, Vigil, City Clerk

Carl Boaz, Council Stenographer

F. PETITIONS FROM THE FLOOR

Mayor Webber limited each petition to two minutes and asked petitioners to not repeat comments already made.

Dave McQuarie, 2997 Calle Cerrado, said, "Good evening, Mayor and Councilors. I wish to congratulate the Mayor and all the Councilors that are returning or newly elected. I would like to mention that I am Vice Chair of the Mayor's Committee on Disability all of you are invited to come to our meeting. It is especially important right now because for years, we have been fighting and we are still fighting. The City seems to be in a backsliding position of not providing access for the disabled. I hope for changes with the new administration. Thank you."

Bianca Madrid, 4429 Santa Lucia Street, said I'll be a translator for Lucinda Olguin. Ms. Olguin gave her statement in Spanish. Ms. Madrid translated her statement afterward as follows: "First of all, I'd like to congratulate Mayor Webber and the newly elected Counselors. My name is Bianca. I'm here with the La Familia project of health care. We hope your attention from the community along Airport Road continues now that complaints have ended. We want and must be included in planning and decision-making in our area. Please remember that most of our families lived north of Airport Road in communities with greater needs and few resources and services. We want to schedule a meeting regarding our support for training and job development for parents. We look forward to working with you. Thank you."

Diego Esquibel, 369 Montezuma said, "Good evening, newly elected and reelected City Counselors and congratulations to the Hon. Mayor Webber. My name is Diego Esquibel, a youth ally supported by Earth Care. As you know, Earth Care supported a Mayoral Forum last month. We would appreciate if you as Mayor, honor the commitment of supporting youth organizations in Santa Fe to help give you a strong and educated voice. Thank you."

Shuva Manina, 3860 Madison Road just outside Santa Fe. "First of all, congratulations to Mayor Webber. We are just here to - well we're to support you in our effort to plan our support for Cesar Chavez. As you can see, there are many of us on the south side we want to work with you to improve our community and for improvements in that part of town. Thank you very much."

Yela Acosta, 369 Montezuma said, "Congratulations Mr. Mayor and members the City Council both new and returning. It is nice to be in a forum where everybody doesn't have to answer the same question. You get to be more creative here. I'm just following up again on the conversations that we had in our South side forum. There were some proposals that came from different organizations that collaborate on that. But also, we want to make sure besides just responding to an individual and just read our proposals, that you take into consideration the communities, the various communities in the Airport Road corridor for people to serve on the commissions, boards, committees so that people's voice can be a part of every conversation that happens here at City Hall and not enough to applaud, that everything gets published and communicated in as many languages as possible so that there is physic engagement and a variety of languages and world views. We look forward to creating a stronger Santa Fe for everybody

involved and how we have follow-up conversations that we need to have. Thank you.”

Stefanie Beninato, P O. Box 1601, said, “I have the copies of what I will distribute to you but, I’m talking about ongoing problems at Salvador Perez Pool. And I think the mandate really at City Hall is to change the culture and make it to become more transparent and responsible to citizens. And some of those citizens include seniors. I certainly heard a lot of promises about seniors during the campaign. I heard that you will pay attention to what goes on at Salvador Perez Pool because it has been mis-operated for several years for six months we hear lame excuses about why the HVAC system isn’t operating properly. The past three or four weeks, there have been ... It’s been incredibly cold in the pool. The air temperature in the pool - and I think that’s because the humidifier is on. Seniors have left the pool early or they have just turned around and not used the facility. I now know a woman today who just said, ‘I’m giving up. I can’t be in the pool. It’s too cold.’ She’s been coming for over 25 years. She really would like to continue to use the pool, but it is absolutely too cold.

And again last Friday, it was closed. At first, there is sixteen in the HVAC system this time. They decided before the HVAC goes off that they have to open all the doors and put all the fans on because of the chlorine build up. That they never tested for. And that would take several hours actually to get anyone close to being concerned about. We were pushed out of the pool; a giant fan was blowing over a third of the pool. People got out or jut avoided using it. Even though the fan didn’t have to be on the pool at all. And then Ms. Roybal, the head of the pool, said, she was up to here with it. She closed the facility and said, ‘Make them fix it’ on Friday. Well, if you didn’t get fixed, it is still cold today. It was still cold Monday and we were pushed out of the pool totally without any results. So we are asking for actual results We need a new humidifier. We are tired of being told, ‘We are waiting for this part and this part. Now we are waiting for a contractor.’ They rebuilt the whole thing by now. With so many parts have been put in to it. So, again, thank you for your attention and I hope we will get some findings that fix this problem as soon as possible.”

Ms. Beninato provided a copy of her petition [attached as Exhibit 8.]

Joey Brown, P.O. 24203, who said, “I am a patron of the Perez pool. I’m not a senior, but I have issues with cold. And so, the last few weeks, it’s been up and down. So I just want to say, I would appreciate it getting fixed so that we can use it. I’s doing it therapy, so I really need to have it at a warmer temperature. I appreciate your help. Thanks.”

Maria Perez, 1014 Don Juan Street, said “Mr. Mayor and Councilors, I want to just congratulate you all today. I’m very happy about the democratic process that was embodied and configured. And also wanted to give a shout out to the City Clerk and to the PIO, Matt Ross, who did a tremendous job getting the public educated about rank place voting and getting the poll workers ready. It was running a smooth election and a really good campaign process with our first rank choice voting election. I shared with the City and some of our shareholders the report we got from exit polls. I have extra copies for anyone who is interest. I think you all received a copy today. Overall, the reports were amazing. 99.9% of voters had a valid ballot, which is incredible. And 99.6% of voters or something like 8 out of every 9 voters, had their vote counted in the final round. People were really confident that this was a good trust that their vote was going to count as they were intending it to be counted. So thank you again and congratulations. I’m looking forward to working with all of you. Thank you, Yolanda, again. And good luck. I’m here to help.”

Paul Gibson, 4 Pinto del Cazador, co-founder of Retake our Democracy. "Welcome Mayor Webber and new Councilors and hello to all the old veteran Councilors. Retake was actively involved with advocating throughout the year last year. We didn't always agree. But I hope all of you realize that our intent was to do what we felt was best for Santa Fe. and in particular, for underserved neighborhoods and populations that are underserved. We are entering a new phase now. With a new Mayor, three new Councilors, and thankfully, none of you are running for Mayor just yet. So maybe we will be able to work together really cohesively. Read Retake our Democracy 24-point people's platform that serves as the framework for Mayoral and City Councilor's voter's guide. None of those completing the survey – none opposed any of the policies in that guide.

We realize that right now, you have a lot of top priorities that you have to address. And we are not expecting you to leap to just to endorse everything we want. But we are hoping to work with you cohesively, collaboratively, collegially and proactively. One of our first policies is related to budget. And our hope is that you will take a look - we don't want to budget for austerity. We would like to see if there isn't some way to start identifying some funding streams the from those not running for office who may be able to actually say increase revenues and some proactive and progressive revenue streams. Because otherwise, none of the social services, education, Pre-K, renewable energy policies that we are advocating for can be implemented without new revenue. Now most of our policies are very low cost. So I hope to work with you. I'm looking forward to working with all of you and congratulations on being there.

Jennifer Johnson, 605 Santa Fe Street. "I'm also a grateful part of Retake our Democracy and I just want to welcome all of you and say how excited we are. I think also going through the process - part of that was also with Corder Familia and how excited we are to see them here today, and the Youth Alliance, Earth Care, Chainbreaker as well. Because I think that we have an incredible amount of information now to work with of what they have been doing over the last 13 years or more.

And I also have a little side thing I just wanted to talk about a little bit. When we talk about housing issues here in town, I just wanted to bring up generally, we know affordable housing is a huge issue here, but what I'd also like to point our attention to, is short-term rentals in the effect it is having on our neighborhoods. And this also goes for second homes. There are some developments coming up as we go up Hyde Park Road, just to bring your awareness to the fact occupancy is 26% in many of these places with second homes and sometimes third homes. And sometimes they are only occupied one week in the year. I just wanted us to be aware of that as we go forward. Because I'm not sure that has helped us at all. It is not helping the day-to-day New Mexicans that need a place to live.

I think I'd like us to consider that and also the impact of short-term rentals. I can tell you in my neighborhood there is nobody there to fight for our neighborhood. We had four houses; we now have 12 condos with only one of those is occupied full-time. Many of these are short-term rentals. When we went from the 350 to 1000 (registered), we are not holding true to the lack of density we should have of short-term rentals in particular neighborhoods. I think it is vital that we keep the integrity of our neighborhoods together because we are the ones who vote; we are the ones here who are putting in time to try to make the City better. Thank you very much. I'm glad you are here."

Shelley Robinson, here on behalf of BTAC. We welcome you, first of all. And look forward to sharing ideas on bicycle improvements and 'Sharing the Road' safety issues throughout the City. One of you lucky

Councilors gets to be our Chairperson. [Councilor Vigil Coppler raised her hand]. We look forward to working with you, Council Vigil-Coppler. We look forward to your leadership." She provided some background on BTAC. In 2003, a group of concerned citizens and bike riders formed the committee with guidance of Councilor Patti Bushee. She read the resolution. She has been on BTAC since 2005 and gave a shout out to their Committee members and asked that those who were present stand. She acknowledged the hundreds of volunteers here. Councilor Bushee and Councilor Maestas were past Chairs of the Committee.

She encouraged everyone to attend the upcoming BTAC meeting next Wednesday at 5:30 in City Council chambers to introduce ourselves to you and spend time answering questions.

She provided a copy of her petition [attached to these minutes as Exhibit 9.]

Carl Gable, 1051 Socoma Vista – "I'm going to ask for a little indulgence. I'm speaking for about 55 people and I have a prepared statement that I think runs about five or six minutes. I have been a Santa Fe resident for over 30 years. During an average week, I him and spend 8-12 hours on my bike. My interest in speaking to you tonight is that I am concerned about the safety of pedestrians and bicycle riders using the roads and paths in and around Santa Fe and the way the laws are enforced when a bicycle/car incident occurs. We have a problem regarding the safety of bike riders and pedestrians.

Secondly, we have advocacy groups in Santa Fe that are prepared to help the city Council formulate and execute solutions.

Dr. Gable urged the Council to make our bike-friendly community your priority - some of us risk our lives when we put our bikes on the road. Through work of City Staff and BTAC - Santa Fe has been designated a Silver Level Bike Friendly City. You might know or be aware of the accidents and fatalities.

Two weeks ago on Highway 41 Seniors on Bikes (SOB's) were approached from behind by a driver who aggressively passed them, then stopped on the road as the group approached, put his car in reverse, hitting the riders in the front of the group. Three people were seriously injured. One person is still in the hospital with multiple fractured ribs, broken pelvis and collapsed lung. Charges are pending. The driver was not arrested at the scene and now, nearly two weeks later, has not been charged. put car in reverse and backed into the group of senior bikers. Charges are still pending.

Dr. Gable shared five other incidents of bicycle/car accidents resulting in serious injury and little consequence to the driver. One driver received a \$156 fine. He noted that of the 50 states, New Mexico has the 3rd highest deaths per million on bicycles.

"I hope I've convinced you we have a problem - Please treat it as opportunity to use low-hanging fruit and find a solution. Please execute plans to make bicycle and pedestrian safety the highest priorities.

"My request to you is:

- 1) Make bicycle and pedestrian safety improvement a goal of this administration.
- 2) Utilize BTAC, the Bicycle and Trails Advisory Committee, as a resource for expert advice on how to improve safety.

- 3) Utilize other interested bicycle advocacy groups such as Bike Santa Fe, League of American Bicyclists, Bicycle Coalition of New Mexico and the Santa Fe Fat Tire Society.
- 4) Distracted driving is bad for everyone. It is especially bad for bicycles sharing the road. Address this problem. Don't tolerate the rampant cell phone usage and texting while driving.
- 5) Look into the uniformity and consistency of the investigation and charges of bike/car and pedestrian/car incidents. Is a slap on the wrist all a driver who causes life-changing injuries should get?

You have an opportunity. Santa Fe offers wonderful resources for bikers and pedestrians. 2000 people come for the Santa Fe Century. We can grow as the bikers' "mecca" but we need to feel safe and the payoff is huge."

[A copy of Dr. Gable's petition is attached to these minutes as Exhibit 10.]

David Bell, owner of Mellow Velo, a small business owner downtown. "I want to congratulate everyone who has successfully campaigned for their spot up there, and I look forward to getting to know you all and hopefully, collaborating with all of you to make Santa Fe anymore cycling friendly city. I've been in business since 2005 and a resident of Santa Fe mostly since 1993. I remember riding here in 1990s when routinely having things thrown at you from cars was acceptable and a very normal part of bike riding in northern New Mexico. I was gone for about 10 years and then came back in 2005. The City has done a tremendous job in building infrastructure for bikers. La Tierra Trail didn't exist back then. The Santa Fe National Forest is a wonderful resource and the two tunnels under St. Francis have helped greatly, even just the visibility of the city's actual support of cycling.

I employ 10-15 people in season and 6 are year-round and highly paid and highly skilled jobs and I am very proud that our community supports. I routinely deal with the visiting public from elsewhere. 12 years ago, no one came here from Denver. Now everyone comes here from Denver. People come here from Austin, people come here from Portland, from people like Minneapolis. These are cities with hundreds of miles of bicycle trails. Please keep infrastructure for bikes on the front burner, not only for public safety, but also to create a much more attractive city in the future. Thank you."

Matt Piccarella, no address given. Councilors, Mr. Mayor, I'm one of the people who have come to talk about bike safety. I'd like to share my thoughts in particular, Crossings. Like Carl (Gable), I spend 8-12 hours a week on a bike in and around Santa Fe. But here is the 20 minutes a day pressing town to get to and from work I am probably most at risk.

There are a couple of things I want to mention. Cross signals with flashing lights you hit a button to activate - it is quite surprising how often people stop for those. I would like to see more of those throughout the city. It is not a perfect solution that it helps with visibility of the driver. Probably the biggest issue for me, because I cross Agua Fria, Cerrillos, St. Francis and St. Michaels to get to work, is crossings. Crossings are so important for getting across. Hitting the button is important to have. I can't tell you how many times I have stood at a crosswalk and had cars zooming by me, making a right turn we tried to get in traffic and the traffic has cyclists. But if there is a car there, we have to go ahead and hit the button. So for cyclists and pedestrians, that is a huge issue. I am conditioned to look left but not everybody is. Focusing efforts at crossings that connect bike paths and corridors. All the crossings that I make getting to work have had this

- Capital Station, Galisteo Street, where it has a connection to the Rail Trail - I ride Baca Street every day. It is terrifying to hear that a person was dragged 80 feet. That's all. My contact information is on this list. Thank you.

[A copy of his petition is attached to these minutes as Exhibit 11.]

Craig O'Hare, 2601 Sol y Lomas Loop. First, I want to congratulate all of you who just won your election and Councilor Lindell who just won her re-election. I also thank all of you for your service to the City of Santa Fe. When you add up all the hours you've put in, you may be barely making the City's minimum wage. As you might know, I was one of the petitioners to bring the ranked choice voting issue before the district court. I didn't relish being in an adversarial position with the City. And so I want to acknowledge that I'm really glad and yet really glad it worked so well I want to thank the City and the City Staff, Mass Ross, the City Clerk and her Staff, the voting center Staff for how well it went. The marketing was great. I really wanted to vote for Roberta Rabbit, but unfortunately couldn't find her when I went in to vote.

Another issue is the La Entrada at Fiestas issue. I hope it gets resolved before next Fiestas. I understand there was a lot of progress has been made for that. There was a commitment 2-3 years ago to resolve it. There was a global issue came out of it. I participated in the demonstration and was disturbed to find the City had established what is called the Free Speech Zone, where our first amendment rights were limited to a caged in, hemmed in area. This is something in my 23 years here, I'd never experienced. I would ask you to revisit this notion of a free speech zone and establish criteria or what have you or do away with it altogether. It really is not consistent with City of Santa Fe.

The second issue is affordable housing. Please address the affordable housing issue, not just for purchase but also low and very low-income rentals.

Tomás Rivera - Chainbreaker collective. We have 700+ members who pay dues. We are excited to continue working after 14 years, with returning Councilors and to start working with new Councilors.

Chainbreaker has a bicycle resource center project that has distributed over 3,000 bicycles to those who can't afford them. We were instrumental in the GO bond passage for SWAN Park. We have educated over 10,000 people in bicycle maintenance and every shop has hired one of our mechanics who were trained in our shop.

We knocked on 17,000 doors over last few months and talked about social equity and with over 5,000 voters on ranked choice voting. We had a panel series on social equity. We appreciate your attendance and look forward to continued conversation around growing and desegregating.

Mayor Webber asked the public to refrain from applause and instead, make silent applause.

Tricia Bellia, no address. I was fortunate to be raised in Santa Fe. First, congratulations to all of you on a wonderful campaign. Glad you're here Mr. Mayor. Congratulations on your mayordom or is that mayorhood?

I'm here for a few reasons but the main reason is - I was not able to get a problem solved. To make it very short, an illegal wall was built right in front of my window, the only window that gives me a view any view of the sunset. And would never would have bought the house without it as a view. I invested in 14 skylights. I love that light. This neighbor built illegally as a piece of sheet metal that completely covers my view and only a few inches of sky. I can't see St Anne's and the sunset. There was no permit issued for the work and they took it down and then put it back. He did move it back, but it still is illegal. I lost \$24,000 of income because the City did not repair it. It needs to be rectified. I did my research and a lawyer is involved.

We should all work to fix it.

Jackie Shane – Interim President of Bicycle Coalition of New Mexico. Congratulations to you. I'm thrilled to have you Mayor Webber. There is already a comprehensive Master Plan for the city on bicycles. We can make it more bike friendly but every day I take my life in my hands on my bike riding home because of incomplete paving with no shoulder. I'll leave it at that.

There were no other petitions from the public and the public petitions portion was closed.

Mayor Webber thanked everyone for coming for civility and good conduct.

G. APPOINTMENTS

There were no other appointments.

H. PUBLIC HEARINGS

- 1) **Case No. 2017-91. Appeal of William L. Harper, Alma Waldo, Russell Waldo, and the Las Brisas de Santa Fe Condominium Association from the September 5, 2017, Decision of the Board of Adjustment to Grant a Request by the Museum of New Mexico Foundation for a Variance From City Code Section 14-8.4(J)(3) (Buffer for Nonresidential Development Abutting Residential). (Rick Word) (Postponed on February 14, 2018) (Postponed to March 28, 2018)**

This case was postponed to March 28, 2018.

END OF PUBLIC HEARINGS

16. MATTERS FROM THE CITY CLERK

Canvass of Election Results – March 6, 2018 Regular Municipal Election.

Ms. Vigil reported that the canvass that was completed last Friday from the election is in the packet. It is different because of ranked-choice voting. She referred to the packet canvass and the numbers were from the first round taken from the tape and memory cards. We put in language to look at different rounds. The first three pages are only on round 1. She attached some other reports, so Councilors could review them.

She explained that this canvass is totally different than before. She asked Councilors to please look at the website for those reports that have a lot of raw data and some reports GIS pulled together.

Councilor Harris congratulated Ms. Vigil for getting this done. She was under a lot of pressure and she and her staff and did a tremendous job. He asked if it included a breakout by district for mayoral candidates.

Ms. Vigil agreed that was included.

Councilor Lindell wanted to ask publicly if we have an ability to analyze votes that didn't get to that level. E.g. do we have data that would show us who Trujillo voters' second choice was.

Ms. Vigil agreed it is available, but it is one of the raw data sets that software can be used to get it and compile a report. It is not up on the website.

Councilor Lindell asked if that is one Dominion could do.

Ms. Vigil thought so. UNM could do it.

Councilor Lindell asked if we could make that request from one of these groups.

Ms. Vigil said she would make the request.

Councilor Lindell thanked her for a very professional election and making it was right instead of fast.

Ms. Vigil added that she will have images of the actual ballots on our website in less than 45 days after the canvass.

Councilor Villarreal echoed thanks to the team that helped with the election. They did a really good job and worked out the kinks. She asked if there was a way to determine how many ranked all five vs. those who only filled out one.

Ms. Vigil agreed. She believed it is one thing that can come out of the raw data. She invited requests and her office would work on them, but they are not there now.

Councilor Villarreal mentioned one report said that 61% of voters ranked all five and many ranked only one or two.

Councilor Rivera asked to be given the definition of under voting.

Ms. Vigil said an undervote is they don't rank all the candidates on their ballot.

Councilor Rivera said, "In District 3, there were 530 undervotes - about 27%. The next highest was District 1 at about 6%. So perhaps we could look at why it was so high for District 3. Was it from not attending the training? Or consider how to make them aware. I know your people did a great job. Maybe it just the way they wanted to cast their ballot."

Councilor Romero-Wirth thanked her for all her help all the way through the process from the day I walked in to the final night. Is voter data available by precinct?

Ms. Vigil said she didn't have voter data by precinct. It is just by district and she didn't believe we can get that data by precinct.

Mayor Webber noted, in addition to recognizing this is a historic election and the work that went into this result, people had confidence in it as an important part of reaffirming the democratic process where in other places, that is under assault. In the end, people felt their votes mattered and it was done with great integrity. There is also a tremendous opportunity to produce a document and the many forms it could take of lessons learned. There will always be things that worked very well like voter education and outreach and that they could learn how to do it. Some things could be done better and maybe things you wouldn't do again. I think I would be happy to work with you and your staff and Matt Ross would also. So we can deliver to the voters a report of some kind that's about the record turnout and that it is ongoing activity for citizen participation and turn it into an ongoing dialogue of the new process and how it can be done.

17. COMMUNICATIONS FROM THE GOVERNING BODY

A copy of "*Bills and Resolutions scheduled for introduction by members of the Governing Body*," for the Council meeting of March 14, 2018, is incorporated herewith to these minutes as Exhibit 12.

Councilor Romero-Wirth

Councilor Romero-Wirth had no communications.

Councilor Harris

Councilor Harris introduced five ordinances that read pretty much the same. "So I'll read in full, the title to the first one and then just cite the names of the other businesses. I am introducing an ordinance granting Broadband Network of New Mexico, LLC., a non-exclusive franchise to operate a telecommunications network within the City of Santa Fe, the right to use City public rights-of-way to provide telecommunications services within the City and fixing the terms and conditions thereof.

In addition to Broadband Network of New Mexico, I am reintroducing an ordinance that states the same for Computer Network Service Professionals, Inc., doing business as NMServe. Additionally, I'll be introducing an ordinance granting the same language to NTerra Broadband, LLC, fourth, introduction of an ordinance granting Cyber Mesa Systems, Inc., and the last one is an ordinance granting Plateau Telecommunications, Inc. a nonexclusive franchise. Thank you."

Councilor Ives

Councilor Ives said, "I'm introducing a resolution authorizing the sale and consumption of beer during the Party on the Fixed Soccer Tournament on June 2, 3, 2018, pursuant to Section 23-6.2B of the Santa Fe City Code."

Councilor Lindell

Councilor Lindell said she had nothing to introduce - just welcome to my new colleagues and my fellow colleagues before - I think we have a focused and capable Governing Body sitting right here. And I can't wait to get to work with all of you.

Councilor Villarreal

Councilor Villarreal echoed the same excitement with my new colleagues and to work with you and continuing to work with the not so newbies.

Also thanks to all of those Staff and my colleagues that reached out to offer condolences for the passing of my grandfather. It was hard for my family, but he lived a long and purposeful life and I appreciate those of you who said kind words to me while I was out last week. Thank you.

Councilor Rivera

Councilor Rivera said, "Welcome to all of our new colleagues. We have a promising Governing Body and I think we are going to do some great things. I see we decided to move chairs. Some of these drawers appear to be locked and we never had keys. Or maybe we have keys or have been keys Maybe we could get them all rekeyed and new keys issued.

Councilor Abeyta

Councilor Abeyta wondered if the Council could have the March 28, 2018 meeting at the South side LiObrary.

MOTION: Councilor Abeyta moved, seconded by Councilor Lindell, to hold the March 28, 2018 Council

meeting at the South Side Library at the usual times.

VOTE: The motion was approved on a voice vote with Mayor Webber and Councilors Abeyta, Vigil Coppler, Harris, Ives, Lindell, Rivera, Villarreal and Carol Romero-Wirth, voting in favor of the motion and none voting against.

Councilor Abeyta said he and Councilor Rivera are going to do great things in District 3 and he looked forward to it.

Councilor Coppler

Councilor Coppler said she also is looking forward to working with the other Councilors. It is more interesting on this side of the dais on the business we have at hand.

Mayor Webber

Mayor Webber said, "I would like to thank all of you as I complete my second day on the job. Good listening to the residents of Santa Fe and building the team we need to continue to improve. My hand of appreciation and collaboration.

I. ADJOURN

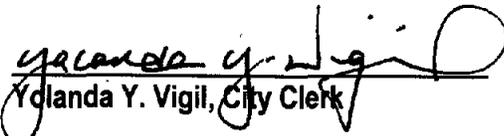
There was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 8:08 p.m.

Approved by:



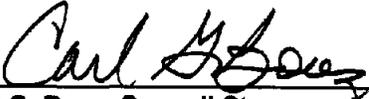
Mayor Alan Webber

ATTESTED TO:



Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Carl G. Boaz, Council Stenographer



Mark Duran
& Associates, Inc.

Council on March 14, 2018
Exhibit 1

February 15, 2018

Dear City of Santa Fe Mayor, Councilors and City Manager,

The 2018 New Mexico Legislative Session has concluded. Major legislation passed includes a budget bill making appropriations totaling \$6.33 billion, up \$259 million or 4.1 percent from FY18 (last year). The budget bill includes a 2% compensation increase for most state employees and an even greater increase for correctional and other public safety employees as well as increased funding for the entire judicial system across the state. The legislature also passed major capital outlay bills including nearly \$180 Million of statewide and local projects from severance tax bonds and \$165 Million of statewide projects in the form of a general obligation bond that will be put in front of voters in the General Election. The Governor has 20 days from the close of the session, until March 7th, to sign or veto any legislation that has reached her desk.

The City of Santa Fe was tremendously successful during the session receiving full funding for the citywide priority and because it was established as a statewide project, Santa Fe legislative delegation monies were able to go to various district projects. In total, over \$2Million was secured in capital outlay for the city. In addition, dozens and dozens of legislation was tracked and lobbied to the city's interest. And, after years of trying, Sen. Rodriguez secured operating funds for the LEAD program which Santa Fe initiated almost four years ago.

Santa Fe's entire legislative delegation deserves to be thanked and congratulated for the tremendous job they do looking out for the city's interests. Leader Wirth, Speaker Egolf, Representatives Carl Trujillo, Linda Trujillo, Jim Trujillo and Senators Nancy Rodriguez and Liz Stefanics all do a tremendous job representing the city. All of the delegation, and especially Leader Wirth, Speaker Egolf and Rep. Carl Trujillo were instrumental in pushing the airport as a statewide priority.

Beginning on the next page is a summary of the financial accomplishments achieved during the legislative session followed by a summary of legislation that was targeted and or lobbied and then a listing of all legislation tracked.

I look forward to providing a verbal report to the Council at your February 28th meeting. Please call with any questions.

Sincerely,

Mark A. Duran, Principal
Mark Duran &
Associates, Inc.

**2018 New Mexico Legislative Session Final Action
Monies Benefiting the City of Santa Fe**

General Fund

New Mexico Home Grown Food Legislation (<u>SB 92</u> , <u>HB 62</u> and <u>SB 106</u>)	\$225,000
"LEAD" Program Funding (<u>SB 111</u>) Monies to be split among SF, Las Cruces and Albuquerque	\$400,000
Total General Fund Monies	\$625,000

Capital Outlay (All projects included in HB 306)

Citywide Priority SANTA FE AIRPORT PARKING FACILITY EXPANSION:	\$1,500,000
District Priorities	
District 3 SANTA FE SWAN REGIONAL PARK:	\$200,800
District 3 AGUA FRIA ST / S MEADOWS ROAD IMPROVEMENTS:	\$100,000
District 2 SANDOVAL / MONTEZUMA ST INTERSECTION:	\$100,000
District 4 SANTA FE GENOVEVA CHAVEZ CENTER HVAC:	\$100,000
District 4 HARRISON RD LIGHTING/SIDEWALKS:	\$28,000
Other Citywide Capital SANTA FE MEAL PROGRAM FACILITY CONSTRUCT EQUIPMENT:	\$218,300
Total Capital Outlay Monies	\$2,247,100

Specific Legislation Targeted/Lobbied

HB 19

Sponsors: Rep. Nate Gentry (R)-Dist. 30, Sen. Daniel A. Ivey-Soto (D)-Dist. 15

Title: INCREASE PENALTY FOR FELON WITH FIREARM

Officers eligible for the retention payments must have 20 years of actual service credit earned under a municipal police member coverage plan as determined by PERA. The retention lump sum payments would not constitute base salary or wages under the Public Employee Retirement Association (PERA) act for pension purposes. Distributions for retention lump sum payments are effective until June 30, 2021.

This legislation passed the House and signed by Governor with partial veto

HB 38

Sponsors: Rep. James E. Smith (R)-Dist. 22, Rep. Debbie A. Rodella (D)-Dist. 41

Title: WIRELESS CONSUMER ADVANCED INFRASTRUCTURE

SB 14

Sponsors: Sen. Jacob Candelaria (D)-Dist. 26, Sen. Candace Gould (R)-Dist. 10

Title: WIRELESS CONSUMER ADVANCED INFRASTRUCTURE

Both bills passed the legislature and signed by Governor.

HB 80

Sponsors: Rep. Roberto "Bobby" J. Gonzales (D)-Dist. 42, Rep. Rod Montoya (R)-Dist. 1

Title: ENERGY REDEVELOPMENT BOND ACT

SB 47

Sponsors: Sen. Jacob Candelaria (D)-Dist. 26, Sen. Steven P. Neville (R)-Dist. 2

Title: ENERGY REDEVELOPMENT BONDS

Both bills died in committee.

HB 98

Sponsors: Rep. Paul C. Bandy (R)-Dist. 3, Sen. Daniel A. Ivey-Soto (D)-Dist. 15, Rep. James E. Smith (R)-Dist. 22

Title: LOCAL ELECTION ACT

As of report time, this bill had not made it through the senate with amendments but house did not concur with amendments. **Legislation passed with two carve-outs for Santa Fe. Signed by Governor.**

SB 253

Sponsor: Sen. Nancy Rodriguez (D)-Dist. 24

Title: INVESTMENT IN SUPRANATIONAL INSTITUTIONS

Not Germane

HB 62

Sponsor: Rep. Jimmie C. Hall (R)-Dist. 28

Title: NM-GROWN PRODUCE IN SCHOOL MEALS

SB 106

Sponsor: Sen. Pat Woods (R)-Dist. 7

Title: NM-GROWN PRODUCE IN SCHOOL MEALS

Funded \$225,000 (Website says these bills died in committee)

SB 111

Sponsor: Sen. Nancy Rodriguez (D)-Dist. 24

Title: LAW-ENFORCEMENT-ASSISTED-DIVERSION

Funded \$400,000 (Website says this bill died in committee)

HJR 14

Sponsors: Rep. Carl Trujillo (D)-Dist. 46, Rep. Linda M. Trujillo (D)-Dist. 48

Title: PROPERTY TAX VALUATION FOR IMPROVEMENTS, CA

No committee hearings. Died.

HJM 4

Sponsor: Rep. Christine Trujillo (D)-Dist. 25

Title: STUDY SUGAR-SWEETENED BEVERAGE TAX

SJM 6

Sponsor: Sen. Gerald Ortiz y Pino (D)-Dist. 12

Title: STUDY SUGAR-SWEETENED BEVERAGE TAX

History: SPREF [3] SRC/SCORC-SRC

Both Died

SB 18

Sponsor: Sen. James P. White (R)-Dist. 19

Title: IMPOSITION OF AVIATION LANDING FEES

Would allow an airport facility that receives funds under the Aviation Act to charge a landing fee for aircraft used in commercial activity or for any aircraft that weigh over 12,500 pounds."

Passed Legislature and pocket vetoed by Governor

SB 23

Sponsor: Sen. Jacob Candelaria (D)-Dist. 26

Title: LOCAL GOVERNMENT PLANNING FUND

Passed the legislature and signed by Governor.

SB 95

Sponsors: Sen. Carlos Cisneros (D)-Dist. 6, Rep. Rebecca Dow (R)-Dist. 38

Title: METRO REDEVELOPMENT CODE CHANGES

Passed the legislature and signed by Governor.

SB 154

Sponsor: Sen. Howie C. Morales (D)-Dist. 28

Title: FOOD GROSS RECEIPTS HOLD HARMLESS CHANGES

Died

SB 162

Sponsor: Sen. Carlos Cisneros (D)-Dist. 6

Title: GROSS RECEIPTS TAX CHANGES

Died

SB 256

Sponsor: Sen. Pete Campos (D)-Dist. 8

Title: MUNICIPALITY REGULATION OF PANHANDLING

Died

SB 263

Sponsor: Sen. Carlos R. Cisneros (D)-Dist. 6

Title: HOSPITAL GROSS RECEIPTS CHANGES

Died

All Statutory Legislation Tracked

HB 62

Sponsor: Rep. Jimmie C. Hall (R)-Dist. 28
Title: NM-GROWN PRODUCE IN SCHOOL MEALS

SB 106

Sponsor: Sen. Pat Woods (R)-Dist. 7
Title: NM-GROWN PRODUCE IN SCHOOL MEALS
Summary: House Bill 62 (HB62) appropriates monies to the Public Education Department (PED) for the purchase and distribution of fresh fruits and vegetable grown in New Mexico to school districts, charter schools, and juvenile detention centers, contributing to the \$250,000 in General Funds listed above.

SB 92

Sponsors: Sen. Jacob Candelaria (D)-Dist. 26, Sen. Candace Gould (R)-Dist. 10
Title: NM-GROWN PRODUCE IN SENIOR CENTERS
Summary: Senate Bill 92 appropriates monies from the general fund to ALTSD to fund nutritional programming at senior centers statewide that provide fresh produce grown by New Mexico farmers to indigent seniors, contributing to the \$250,000 in General Funds listed above.

SB 111

Sponsor: Sen. Nancy Rodriguez (D)-Dist. 24
Title: LAW-ENFORCEMENT-ASSISTED-DIVERSION
Summary: Senate Bill 111 appropriates \$450 thousand from the general fund to the Department of Finance and Administration (DFA) Local Government Division resulting in \$450,000 in General Funds listed above.

HB 306

Sponsor: Rep. Carl Trujillo (D)-Dist. 46
Title: SEVERANCE TAX BOND PROJECTS
Summary: STB Funding for Capital Outlay Projects listed above, totaling \$2,247,100.

HB 19

Sponsors: Rep. Nate Gentry (R)-Dist. 30, Sen. Daniel A. Ivey-Soto (D)-Dist. 15
Title: INCREASE PENALTY FOR FELON WITH FIREARM
Summary:



HB 80

Sponsors: Rep. Roberto "Bobby" J. Gonzales (D)-Dist. 42, Rep. Rod Montoya (R)-Dist. 1
Title: ENERGY REDEVELOPMENT BOND ACT

SB 47

Sponsors: Sen. Jacob Candelaria (D)-Dist. 26, Sen. Steven P. Neville (R)-Dist. 2
Title: ENERGY REDEVELOPMENT BONDS
Summary: House Bill 80 and Senate Bill 47 authorize an alternative mechanism for financing the retirement of coal-fired power plants. It has been designed to accommodate the retirement in 2023 of Units 1 and 4 of the San Juan Generation Station, and to anticipate the closure of the Four Corners Power Plant in 2031. The bill is also designed to mitigate some of the adverse economic effects on affected local communities by requiring the location of replacement power resources in the communities where the abandoned facilities are located, taking into consideration system reliability while assuring that such location does not eliminate the cost savings from energy redevelopment bonds. The securitization mechanism provide PNM and other affected investor-owned utilities with 100 percent recovery of stranded costs with potentially a lower cost to customers as compared to conventional financing mechanisms.
There is no effective date of these bills. It is assumed that the effective date is 90 days after this session ends or May 16, 2018. Section 23 of the bill indicates that the provisions of the act shall not apply to a qualifying utility that makes an initial application for a financing order more than twenty years after the effective date of this act.

HB 98

Sponsors: Rep. Paul C. Bandy (R)-Dist. 3, Sen. Daniel A. Ivey-Soto (D)-Dist. 15, Rep. James E. Smith (R)-Dist. 22
Title: LOCAL ELECTION ACT

Summary: House Bill 49 amends the conditions for the recall election of elective officers in commission-manager municipalities. This bill makes clear that a commission-manager municipality is subject to a recall election for malfeasance or misfeasance in office, or a violation of the oath of office. As outlined in this bill, prior to the circulation of a recall petition, a determination of probable cause for the recall by the district court must be made. A determination of probable cause for the recall by the district court must be made prior to the circulation of a recall petition. A complaint must be filed with the district court for the county in which the recall is to be conducted outlining factual allegations that support the grounds for recall. If the district court determines probable cause for the recall exists, the recall petition may then be circulated. The proposed amendments require the petition for a recall election cite grounds of malfeasance or misfeasance in office or violation of the oath of office by the official concerned. Such actions must have occurred during the official's current term.

HB 168

Sponsors: Rep. James G. Townsend (R)-Dist. 54, Rep. Larry R. Scott (R)-Dist. 62, Rep. Bob Wooley (R)-Dist. 66
Title: GAS TAX CHANGES

Summary: House Bill 168 revises who is required to act as the taxpayer for gasoline tax, special fuel excise tax, and the petroleum products loading fee (PPL fee) when motor fuel is loaded at a rack or fuel terminal in New Mexico. Under current law, the distributor who receives (purchases) fuel from the rack or terminal is the taxpayer. Under this bill, the rack operator who provides (sells) fuel from the rack or terminal would be the taxpayer. In effect, the bill moves the incidence of gasoline and special fuel excise tax to the rack operator rather than the distributor for fuel received at a rack.

HB 306

Sponsor: Rep. Carl Trujillo (D)-Dist. 46
Title: SEVERANCE TAX BOND PROJECTS

Summary: Funding for Capital Outlay

HB 38

Sponsors: Rep. James E. Smith (R)-Dist. 22, Rep. Debbie A. Rodella (D)-Dist. 41
Title: WIRELESS CONSUMER ADVANCED INFRASTRUCTURE

SB 14

Sponsors: Sen. Jacob Candelaria (D)-Dist. 26, Sen. Candace Gould (R)-Dist. 10

Title: WIRELESS CONSUMER ADVANCED INFRASTRUCTURE

Summary: HB 38 and SB 14 establish the Wireless Consumer Advanced Infrastructure Investment Act, which provides for city and county regulation of the timelines, costs and requirements for the placement, timing and cost of small cellular provider facilities on municipal or county infrastructure. It also allows wireless providers to collocate small wireless facilities in the public right-of-way ("ROW") and install, modify, replace and operate utility poles in the public ROW. Establishes rates, fees, and time frames for applications.

HB 325

Sponsors: Rep. Rod Montoya (R)-Dist. 1, Steven P. Neville (R)-Dist. 2
Title: PUBLIC UTILITY FACILITY ABANDONMENT

Summary: The House Rules Committee Substitute for House Bill 325 requires a utility to construct a replacement facility in certain circumstances, and also requires the Public Regulation Commission to consider economic impacts in deciding to approve the abandonment of a public utility facility.

HJM 4

Sponsor: Rep. Christine Trujillo (D)-Dist. 25
Title: STUDY SUGAR-SWEETENED BEVERAGE TAX

Summary: House Joint Memorial 4 requests that the Legislative Finance Committee conduct a study of the potential benefits in revenue and public health outcomes and the potential negative impacts of a tax on sugar-sweetened beverages. The joint memorial suggests that the most efficient implementation of the tax is as a manufacturer's excise tax, increasing the retail cost of soda by the 20 percent increase recommended by the World Health

Organization. The joint memorial does not have an effective date, but requires the LFC to prepare and present the study to the Governor and Legislature by October 2018.

HJR 14

Sponsors: Rep. Carl Trujillo (D)-Dist. 46, Rep. Linda M. Trujillo (D)-Dist. 48

Title: PROPERTY TAX VALUATION FOR IMPROVEMENTS, CA

Summary: House Joint Resolution 14 proposes a temporary exclusion of property tax valuation increases related to increasing the number of dwellings on a property. The exclusion must be approved by the local municipality or county commission or council. The exclusion would be valid for up to seven years. This constitutional amendment would be presented to the voters at the next general election (November 2018) or at a special election prior to that date.

SJM 6

Sponsor: Sen. Gerald Ortiz y Pino (D)-Dist. 12

Title: STUDY SUGAR-SWEETENED BEVERAGE TAX

Summary: Senate Joint Memorial 6 and House Joint Memorial 4 request that the Legislative Finance Committee conduct a study of the potential benefits in revenue and public health outcomes and the potential negative impacts of a tax on sugar-sweetened beverages. The joint memorials suggest that the most efficient implementation of the tax is as a manufacturer's excise tax, increasing the retail cost of soda by the 20 percent increase recommended by the World Health Organization. The joint memorials do not have an effective date, but requires the LFC to prepare and present the study to the Governor and Legislature by October 1, 2018.

SB 18

Sponsor: Sen. James P. White (R)-Dist. 19

Title: IMPOSITION OF AVIATION LANDING FEES

Summary: Senate Bill 18 would allow an airport facility that receives funds under the Aviation Act to charge a landing fee for aircraft used in commercial activity or for any aircraft that weigh over 12,500 pounds.

SB 23

Sponsors: Sen. Jacob Candelaria (D)-Dist. 26,

Title: LOCAL GOVERNMENT PLANNING FUND

Summary: Senate Bill 23 appropriates \$1.5 million from the public project revolving loan fund (PPRF) to the local government planning fund (LGPF) administered by the New Mexico Finance Authority (NMFA) for expenditure in fiscal year 2019 and subsequent fiscal years to make grants to local governments and other qualified entities for infrastructure planning documents, water and wastewater public projects, conservation plans, long-term master plans, economic development plans or energy audits. SB23 does allow payment for administrative costs by NMFA in administering the LGPF. The effective date of SB23 is July 1, 2018.

SB 95

Sponsor: Sen. Carlos Cisneros (D)-Dist. 6, Rep. Rebecca Dow (R)-Dist. 38

Title: METRO REDEVELOPMENT CODE CHANGES

Summary: This bill amends the Metropolitan Redevelopment Act (MRA) to include all New Mexico counties. Currently, only Los Alamos and Bernalillo counties can use the MRA.

SB 154

Sponsor: Sen. Howie C. Morales (D)-Dist. 28

Title: FOOD GROSS RECEIPTS HOLD HARMLESS CHANGES

Summary: Senate Bill 154 would change the food and medical hold harmless distributions to municipalities and H counties with population between 10,000 and 25,000 at the last decennial census, provided that that municipality does not have an increment of the municipal hold harmless GRT in place. The bill also clarifies the distribution categories for both municipalities and counties, by defining a maximum distribution.

Municipalities in the new category will receive 82 percent of the maximum distribution and will retain that 82 percent after the scheduled phase out effective July 1, 2029. The definition of maximum distribution for the new category allows the 82 percent distribution to be calculated to include any local increments of GRT imposed after January 1, 2007.

SB 162

Sponsor: Sen. Carlos Cisneros (D)-Dist. 6

Title: GROSS RECEIPTS TAX CHANGES

Summary: Senate Bill 162 is a gross receipts tax (GRT) reform package with a few key components. First, it brings hospitals into the state tax base and levels the playing field for hospitals at the state level regardless of corporate structure – for-profit, nonprofit, or governmental. Second, it increases the motor vehicle excise tax (MVX) rate from 3 percent to 4 percent. Third, it applies the GRT to remote sellers such as Internet retailers and platforms, including third-party sales through websites like Amazon. It also allows local sharing of remote seller revenues. Fourth, it uses the significant majority of the revenues generated by these provisions to lower the state GRT rate from 5.125 percent to 4.845 percent. Finally, it provides some tax code cleanup and repeals a variety of tax expenditures that are expired, unused, or have unknown costs where it appears the original intent may no longer exist. It removes a potential loophole that would prevent taxation of the prime contractor of a national laboratory, such as Los Alamos National Laboratory (LANL), if the contract is awarded to a nonprofit instead of the current for-profit contractors. It removes another potential loophole in the insurance "in lieu of" provision, where the possibility exists for taxpayers in the future to merge with an insurance company or begin selling insurance policies to avoid nearly all other taxes, including GRT. The effective date for most provisions of this bill is July 1, 2018, although the remote seller provisions are effective July 1, 2019.

SB 245

Sponsor: Sen. Carlos R. Cisneros (D)-Dist. 6

Title: CAPITAL OUTLAY REAUTHORIZATIONS

Summary: Senate Bill 245 reauthorizes 14 capital projects authorized in previous years from various funds. As of the December 2017 quarterly report, the unexpended balance for the 14 projects is approximately \$7.2 million. The reauthorizations of capital outlay projects range from changing the administering agency or the original purpose of the project, extending the reversion date, or expanding the purpose of the original project. The bill has an emergency clause.

SB 253

Sponsor: Sen. Nancy Rodriguez (D)-Dist. 24

Title: INVESTMENT IN SUPRANATIONAL INSTITUTIONS

Summary: Senate Bill 253 permits the five Class-A counties (Bernalillo, Dona Ana, San Juan, Sandoval and Santa Fe), Albuquerque, Las Cruces, Rio Rancho and Santa Fe and the State Treasurer's Office to purchase the obligations of supranational entities operating within the United States.

SB 256

Sponsor: Sen. Pete Campos (D)-Dist. 8

Title: MUNICIPALITY REGULATION OF PANHANDLING

Summary: SB 256 would enact a new section of the Municipal Code to provide municipalities with the right to tax, regulate and license panhandlers. It would provide that a person who passively stands or sits with a sign or other indication the person is seeking donations is not a panhandler. The effective date of the proposed legislation would be July 1, 2018.

SB 263

Sponsor: Sen. Carlos R. Cisneros (D)-Dist. 6

Title: HOSPITAL GROSS RECEIPTS CHANGES

Summary: AN ACT RELATING TO TAXATION; IMPOSING THE STATE GROSS RECEIPTS TAX ON A NONPROFIT HOSPITAL; IMPOSING THE GOVERNMENTAL GROSS RECEIPTS TAX ON A GOVERNMENT HOSPITAL; PROVIDING THAT THE NET GOVERNMENTAL GROSS RECEIPTS ATTRIBUTABLE TO GOVERNMENT HOSPITALS SHALL BE DISTRIBUTED TO THE GENERAL FUND; AMENDING AND REPEALING A DISTRIBUTION AND TAX CREDIT RELATED TO HOSPITALS; MAKING APPROPRIATIONS.

City of Santa Fe Complete Bill Tracker

Bill	Short Title Sponsors / Actions	Summary
<p>HB 19</p>	<p>INCREASE PENALTY FOR FELON WITH FIREARM Nate Gentry Daniel A. Ivey-Soto HPREF [1] not prntd-HRC [2] w/drn - germane-prntd- - ref HCPAC/HJC/HAFC-HCPAC [3] DP-HJC- HAFC ref w/drn- HJC-HJC [4] DNP-CS/DP [5] fl/aa- PASSED/H (66-1) [11] SJC/SFC-SJC [18] DP/a-SFC-w/drn [19] fl/a- PASSED/S (32-2) [10] h/cncrd SGND BY GOV (Mar. 7) Ch. 74 (partial veto).</p>	<p>Click to Open Extensive Summary</p> 
<p>HB 38</p>	<p>WIRELESS CONSUMER ADVANCED INFRASTRUCTURE James E. Smith Debbie A. Rodella HPREF [1] not prntd-HRC [2] w/drn - germane-prntd- - ref HLELC/HBIC-HLELC [4] DP/a-HBIC [5] DNP-CS/DP [6] PASSED/H (54-10) [14] SCORC-SCORC [18] DP - PASSED/S (34-3) SGND BY GOV (Feb. 28) Ch. 17.</p>	<p>" Synopsis of HLELC Amendment The House Local Government, Elections, Land Grant, and Cultural Affairs Committee amendment primarily makes technical corrections and rennumbers subsections according to those changes. Substantial changes include the following: 1. On page 8, subsection D, allows an authority to adjust the rate it charges for the use of a right of way, but not more than once a year and by no more than an amount equal to one-half the annual change, if any, in the most recent consumer price index for all urban consumers for New Mexico, a published by the United States Department of Labor. This section also specifies that the authority shall notify all wireless providers of this rate, that adjustment will become effective sixty days or more following the notice. 2. On page 10, includes definition for design district. 3. On page 10, includes a new subsection stating that without the authority's discretionary and written consent, which the authority shall give in a non discriminatory way, a wireless provider shall not install a new utility pole in a right of way adjacent to a street or thoroughfare with exceptions. 4. On page 10, includes a subsection stating that a wireless facility in a right of way as described in subsection H of that section shall comply with applicable private deed restrictions and other private restrictions affecting the area. 5. On page 10, the authority may require the wireless provider to return the property to its pre-damage condition according to the authority's requirements and specifications. Synopsis of Original Bill This bill establishes the Wireless Consumer Advanced Infrastructure Investment Act, which provides for city and county regulation of the timelines, costs and requirements for the placement, timing and cost of small cellular provider facilities on municipal or county infrastructure. It also allows wireless providers to collocate small wireless facilities in the public right-of-way ("ROW") and install, modify, replace and operate utility poles in the public ROW. Establishes rates, fees, and time frames for applications. "</p>

<p><u>SB 14</u></p>	<p>WIRELESS CONSUMER ADVANCED INFRASTRUCTURE Jacob Candelaria Candace Gould SPREF [1] SCC/SCORC/SJC-SCC (6)germane-SCORC [10] DP/a-SJC [14] DNP-CS/DP [17] PASSED/S (34-3) [7] HBIC-HBIC [8] DP [9] PASSED/H (65-2) SGND BY GOV (Mar. 7) Ch. 69.</p>	<p>"This bill establishes the Wireless Consumer Advanced Infrastructure Investment Act, which provides for city and county regulation of the timelines, costs and requirements for the placement, timing and cost of small cellular provider facilities on municipal or county infrastructure. It also allows wireless providers to collocate small wireless facilities in the public right-of-way ("ROW") and install, modify, replace and operate utility poles in the public ROW. Establishes rates, fees, and time frames for applications."</p>
<p><u>HB 62</u></p>	<p>NM-GROWN PRODUCE IN SCHOOL MEALS Jimmie C. Hall HPREF [1] not prntd-HRC [2] w/drn - germane-prntd - - ref HAWC/HAFC- HAWC [3] DP-HAFC</p>	<p>"House Bill 62 (HB62) appropriates \$400 thousand to the Public Education Department (PED) for the purchase and distribution of fresh fruits and vegetable grown in New Mexico to school districts, charter schools, and juvenile detention centers. "</p>
<p><u>SB 106</u></p>	<p>NM-GROWN PRODUCE IN SCHOOL MEALS Pat Woods [5] SCC/SCONC/SFC-SCC-germane- SCONC [9] DP-SFC</p>	<p>"Senate Bill 106 appropriates \$400 thousand from the general fund to PED for expenditure in FY19 and subsequent years for the purchase and distribution of New Mexico-grown fresh fruits and vegetables for school districts, charter schools, and juvenile detention centers through PED's school meal programs."</p>
<p><u>HB 80</u></p>	<p>ENERGY REDEVELOPMENT BOND ACT Roberto "Bobby" J. Gonzales Rod Montoya HPREF [1] not prntd-HRC [2] w/drn - germane-prntd - - ref HCPAC/HENRC- HCPAC</p>	<p>"House Bill 80 authorizes an alternative mechanism for financing the retirement of coal-fired power plants. It has been designed to accommodate the retirement in 2023 of Units 1 and 4 of the San Juan Generation Station, and to anticipate the closure of the Four Corners Power Plant in 2031. The bill is also designed to mitigate some of the adverse economic effects on affected local communities by requiring the location of replacement power resources in the communities where the abandoned facilities are located, taking into consideration system reliability while assuring that such location does not eliminate the cost savings from energy redevelopment bonds. The securitization mechanism provides PNM and other affected investor-owned utilities with 100 percent recovery of stranded costs with potentially a lower cost to customers as compared to conventional financing mechanisms. "</p>
<p><u>SB 47</u></p>	<p>ENERGY REDEVELOPMENT BONDS Jacob Candelaria Steven P. Neville SPREF [2] SCC/SCONC/SCORC-SCC [3]germane-SCONC</p>	<p>"Senate Bill 47 authorizes an alternative mechanism for financing the retirement of coal-fired power plants. It has been designed to accommodate the retirement in 2023 of Units 1 and 4 of the San Juan Generation Station, and to anticipate the closure of the Four Corners Power Plant in 2031. The bill is also designed to mitigate some of the adverse economic effects on affected local communities by requiring the location of replacement power resources in the communities where the abandoned facilities are located, taking into consideration system reliability while assuring that such location does not eliminate the cost savings from energy redevelopment bonds. The securitization mechanism provide PNM and other affected investor-owned utilities with 100 percent recovery of stranded costs with potentially a lower cost to customers as compared to conventional financing mechanisms. There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends or May 16, 2018. Section 23 of the bill indicates that the provisions of the act shall not apply to a qualifying utility that makes an initial application for a financing order more than twenty years after the effective date of this act."</p>

<p><u>HB 98</u></p>	<p>LOCAL ELECTION ACT Paul C. Bandy Daniel A. Ivey-Soto James E. Smith HPREF [1] not prntd-HRC [3] w/drn - germane-prntd - ref HLELC/HJC-HLELC [6] DNP-CS/DP-HJC [7] DP/a - PASSED/H (51-10) [18] SRC-SRC [19] DP/a [20] PASSED/S (25-15) [10] h/fld cnrc [20] s/fld recede [10] CC-CC- h/rpt adpdt [20] s/rpt adpdt SGND BY GOV (Mar. 7) Ch. 79.</p>	<p>"House Bill 49 amends the conditions for the recall election of elective officers in commission-manager municipalities. This bill makes clear that any commission-manager municipality is subject to a recall election for malfeasance or misfeasance in office, or a violation of the oath of office. As outlined in this bill, prior to the circulation of a recall petition, a determination of probable cause for the recall by the district court must be made. A determination of probable cause for the recall by the district court must be made prior to the circulation of a recall petition. A compliant must be filed with the district court for the county in which the recall is to be conducted outlining factual allegations that support the grounds for recall. If the district court determines probable cause for the recall exists, the recall petition may then be circulated. The proposed amendments require the petition for a recall election cite grounds of malfeasance or misfeasance in office or violation of the oath of office by the official concerned. Such actions must have occurred during the official's current term."</p>
<p><u>HB 168</u></p>	<p>GAS TAX CHANGES James G. Townsend Larry R. Scott Bob Wooley [2] HSIVC/HJC/HTRC-HSIVC</p>	<p>"House Bill 168 revises who is required to act as the taxpayer for gasoline tax, special fuel excise tax, and the petroleum products loading fee (PPL fee) when motor fuel is loaded at a rack or fuel terminal in New Mexico. Under current law, the distributor who receives (purchases) fuel from the rack or terminal is the taxpayer. Under this bill, the rack operator who provides (sells) fuel from the rack or terminal would be the taxpayer. In effect, the bill moves the incidence of gasoline and special fuel excise tax to the rack operator rather than the distributor for fuel received at a rack."</p>
<p><u>*HB 306</u></p>	<p>SEVERANCE TAX BOND PROJECTS Carl Trujillo [4] HTRC-HTRC [6] DNP-CS/DP [7] PASSED/H (64-0) [18] SFC-SFC [19] DP - PASSED/S (39-0) SGND BY GOV (Mar. 7) Ch. 80 (partial veto).</p>	<p>"House bill 306 authorizes \$119.3 million, including nearly \$79.5 million from severance tax bond (STB) capacity, \$3.5 million from prior STB Local Economic Development Act appropriations, approximately \$35.3 million from other state funds, and almost \$1.1 million from the general fund, to fund capital outlay projects statewide. The bill leaves nearly \$63 million of remaining STB capacity for policymakers to allocate. The bill contains an emergency clause."</p>
<p><u>HB 325</u></p>	<p>PUBLIC UTILITY FACILITY ABANDONMENT Rod Montoya Steven P. Neville [4] not prntd-HRC [6] DNP-CS/w/o rec- germane - ref HJC-HJC [8] DNP-CS/DP - PASSED/H (44-25) [19] SCONC-SCONC</p>	<p>"The House Rules Committee Substitute for House Bill 325 requires a utility to construct a replacement facility in certain circumstances, and also requires the Public Regulation Commission to consider economic impacts in deciding to approve the abandonment of a public utility facility."</p>
<p><u>SB 92</u></p>	<p>NM-GROWN PRODUCE IN SENIOR CENTERS Jacob Candelaria Candace Gould SPREF [2] SCC/SPAC/SFC-SCC [5]germane-SPAC [8] DP-SFC</p>	<p>"Senate Bill 92 appropriates \$500 thousand from the general fund to ALTSD to fund nutritional programming at senior centers statewide that provide fresh produce grown by New Mexico farmers to indigent seniors."</p>

<p><u>SB 111</u></p>	<p>LAW-ENFORCEMENT-ASSISTED-DIVERSION Nancy Rodriguez [5] SCC/SJC/SFC-SCC-germane-SJC [8] DP-SFC</p>	<p>"Senate Bill 111 appropriates \$450 thousand from the general fund to the Department of Finance and Administration (DFA) Local Government Division for the purpose of supporting the ongoing Santa Fe Law Enforcement Assisted Diversion (LEAD) program and for help starting LEAD programs in Bernalillo and Dona Ana counties. "</p>
<p><u>SB 162</u></p>	<p>GROSS RECEIPTS TAX CHANGES Carlos R. Cisneros [5] SCC/SCORC/SFC-SCC [6]germane-SC ORC</p>	<p>"Senate Bill 162 is a gross receipts tax (GRT) reform package with a few key components. First, it brings hospitals into the state tax base and levels the playing field for hospitals at the state level regardless of corporate structure – for-profit, nonprofit, or governmental. Second, it increases the motor vehicle excise tax (MVX) rate from 3 percent to 4 percent. Third, it applies the GRT to remote sellers such as Internet retailers and platforms, including third-party sales through websites like Amazon. It also allows local sharing of remote seller revenues. Fourth, it uses the significant majority of the revenues generated by these provisions to lower the state GRT rate from 5.125 percent to 4.845 percent. Finally, it provides some tax code cleanup and repeals a variety of tax expenditures that are expired, unused, or have unknown costs where it appears the original intent may no longer exist. It removes a potential loophole that would prevent taxation of the prime contractor of a national laboratory, such as Los Alamos National Laboratory (LANL), if the contract is awarded to a nonprofit instead of the current for-profit contractors. It removes another potential loophole in the insurance "in lieu of" provision, where the possibility exists for taxpayers in the future to merge with an insurance company or begin selling insurance policies to avoid nearly all other taxes, including GRT. The effective date for most provisions of this bill is July 1, 2018, although the remote seller provisions are effective July 1, 2019. "</p>
<p><u>*SB 245</u></p>	<p>CAPITAL OUTLAY REAUTHORIZATIONS Carlos R. Cisneros [9] SCC/SFC-SCC-germane-SFC [18] DNP-CS/DP - PASSED/S (36-0) [8] HTRC-HTRC [9] DP [10] PASSED/H (63-0) SGND BY GOV (Mar. 7) Ch. 68 (partial veto).</p>	<p>"Senate Bill 245 reauthorizes 14 capital projects authorized in previous years from various funds. As of the December 2017 quarterly report, the unexpended balance for the 14 projects is approximately \$7.2 million. The reauthorizations of capital outlay projects range from changing the administering agency or the original purpose of the project, extending the reversion date, or expanding the purpose of the original project. The bill has an emergency clause. "</p>
<p><u>SB 263</u></p>	<p>HOSPITAL GROSS RECEIPTS CHANGES Carlos R. Cisneros [9] SCC/SCORC/SFC-SCC [10]germane-SCORC [18] w/drn-SFC</p>	<p>"AN ACT RELATING TO TAXATION; IMPOSING THE STATE GROSS RECEIPTS TAX ON A NONPROFIT HOSPITAL; IMPOSING THE GOVERNMENTAL GROSS RECEIPTS TAX ON A GOVERNMENT HOSPITAL; PROVIDING THAT THE NET GOVERNMENTAL GROSS RECEIPTS ATTRIBUTABLE TO GOVERNMENT HOSPITALS SHALL BE DISTRIBUTED TO THE GENERAL FUND; AMENDING AND REPEALING A DISTRIBUTION AND TAX CREDIT RELATED TO HOSPITALS; MAKING APPROPRIATIONS."</p>
<p><u>HB 49</u></p>	<p>MUNICIPALITY RECALL ELECTIONS Dennis J. Roch HPREF [1] not prntd-HRC [2] w/drn - germane-prntd- - ref HLELC/HJC-HLELC [4] DP/a-HJC [5] DP [6] PASSED/H (47-21) [14] SJC-SJC [18] DP [20] PASSED/S (38-0) SGND BY GOV (Mar. 2) Ch. 49.</p>	<p>"House Bill 49 amends the conditions for the recall election of elective officers in commission-manager municipalities. This bill makes clear that any commission-manager municipality is subject to a recall election for malfeasance or misfeasance in office, or a violation of the oath of office. As outlined in this bill, prior to the circulation of a recall petition, a determination of probable cause for the recall by the district court must be made. "</p>

<u>HB 228</u>	GAS TAX INCREASE & ROAD FUND Antonio "Moe" Maestas Roberto "Bobby" J. Gonzales [2] HTPWC/HTRC-HTPWC [6] w/o rec-HTRC	"House Bill 228 contains the following provisions, effective July 1, 2018: ·increases the gasoline tax by 10 cents per gallon (from 17 cents to 27 cents), ·increases the special fuels tax by 10 cents per gallon (from 21 cents to 31 cents), and ·creates the state road maintenance fund. "
<u>HB 273</u>	SENIOR CENTER NUTRITIONAL PROGRAMMING Jim R. Trujillo Carl Trujillo [3] HHC/HAFc-HHC [5] DP-HAFc	"House Bill 273 appropriates \$500 thousand from the general fund to ALTSD to fund nutritional programming at senior centers statewide that provide fresh produce grown by New Mexico farmers to indigent seniors. "
<u>HJM 4</u>	STUDY SUGAR-SWEETENED BEVERAGE TAX Christine Trujillo HPREF [1] HAFc-HAFc	"House Joint Memorial 4 requests that the Legislative Finance Committee conduct a study of the potential benefits in revenue and public health outcomes and the potential negative impacts of a tax on sugar-sweetened beverages. The joint memorial suggests that the most efficient implementation of the tax is as a manufacturer's excise tax, increasing the retail cost of soda by the 20 percent increase recommended by the World Health Organization. The joint memorial does not have an effective date, but requires the LFC to prepare and present the study to the Governor and Legislature by October 2018. "
<u>SJM 6</u>	STUDY SUGAR-SWEETENED BEVERAGE TAX Gerald Ortiz y Pino SPREF [3] SRC/SCORC-SRC	"Senate Joint Memorial 6 requests that the Legislative Finance Committee conduct a study of the potential benefits in revenue and public health outcomes and the potential negative impacts of a tax on sugar-sweetened beverages. The joint memorial suggests that the most efficient implementation of the tax is as a manufacturer's excise tax, increasing the retail cost of soda by the 20 percent increase recommended by the World Health Organization. The joint memorial does not have an effective date, but requires the LFC to prepare and present the study to the Governor and Legislature by October 1, 2018. "
<u>HJR 14</u>	PROPERTY TAX VALUATION FOR IMPROVEMENTS, CA Carl Trujillo Linda M. Trujillo [6] HLELC/HTRC-HLELC	"House Joint Resolution 14 proposes a temporary exclusion of property tax valuation increases related to increasing the number of dwellings on a property. The exclusion must be approved by the local municipality or county commission or council. The exclusion would be valid for up to seven years. This constitutional amendment would be presented to the voters at the next general election (November 2018) or at a special election prior to that date."
<u>SB 18</u>	IMPOSITION OF AVIATION LANDING FEES James P. White SPREF [1] SCC/SCORC/SPAC-SCC [3]germane-SCORC [8] DP-SPAC [11] DP [12] PASSED/S (28-13) [6] HTPWC-HTPWC- DP [8] fl/a- PASSED/H (60-6) [19] s/cncrd POCKET VETO.	"Senate Bill 18 would allow an airport facility that receives funds under the Aviation Act to charge a landing fee for aircraft used in commercial activity or for any aircraft that weigh over 12,500 pounds. "
<u>SB 23</u>	LOCAL GOVERNMENT PLANNING FUND Jacob Candelaria SPREF [1] SCC/SPAC/SFC-SCC [3]germane-SPAC [7] DP-SFC [14] DP - PASSED/S (38-0) [6] HAFc-HAFc [8] DP [9] PASSED/H (63-0) POCKET VETO.	"Senate Bill 23 appropriates \$1.5 million from the public project revolving loan fund (PPRF) to the local government planning fund (LGPF) administered by the New Mexico Finance Authority (NMFA) for expenditure in fiscal year 2019 and subsequent fiscal years to make grants to local governments and other qualified entities for infrastructure planning documents, water and wastewater public projects, conservation plans, long-term master plans, economic development plans or energy audits. SB23 does allow payment for administrative costs by NMFA in administering the LGPF. The effective date of SB23 is July 1, 2018. "

<p><u>SB 95</u></p>	<p>METRO REDEVELOPMENT CODE CHANGES Carlos R. Cisneros Rebecca Dow SPREF [2] SCC/SPAC/SCORC-SCC [6]germane-SPAC [8] DP-SCORC [11] DP [12] PASSED/S (40-0) [6] HLELC/HJC- HLELC [8] DP-HJC [10] DP - PASSED/H (65-0) SGND BY GOV (Mar. 2) Ch. 60.</p>	<p>"This bill amends the Metropolitan Redevelopment Act (MRA) to include all New Mexico counties. Currently, only Los Alamos and Bernalillo counties can use the MRA."</p>
<p><u>SB 151</u></p>	<p>ENHANCED ENTERPRISE ZONE ACT Daniel A. Ivey-Soto [5] SCC/SCORC/SJC/SFC-SCC [7]germane- SCORC [11] DP-SJC</p>	<p>"Senate Bill 151 enacts the Enhanced Enterprise Zone Act and allows local governments to establish Enhanced Enterprise Zones (EEZ) as economic tools. EEZs may be used in "economically underperforming areas" as shown by an economic impact study. The incentive to participate in an EEZ is the abatement of the collection of property taxes on the improvements to the properties in the zone for a period not greater than 10 years. The collection of the increased property tax valuation is phased in over a three year period following the end of the abatement. The law will sunset July 1, 2033. In 2030, the Legislative Finance Committee shall study the effectiveness of the Enhanced Enterprise Zone Act."</p>
<p><u>SB 154</u></p>	<p>FOOD GROSS RECEIPTS HOLD HARMLESS CHANGES Howie C. Morales [5] SCC/SCORC/SFC-SCC [6]germane- SCORC [14] DP-SFC</p>	<p>"Senate Bill 154 would change the food and medical hold harmless distributions to municipalities and H counties with population between 10,000 and 25,000 at the last decennial census, provided that that municipality does not have an increment of the municipal hold harmless GRT in place. The bill also clarifies the distribution categories for both municipalities and counties, by defining a maximum distribution. Municipalities in the new category will receive 82 percent of the maximum distribution and will retain that 82 percent after the scheduled phase out effective July 1, 2029. The definition of maximum distribution for the new category allows the 82 percent distribution to be calculated to include any local increments of GRT imposed after January 1, 2007. "</p>
<p><u>SB 253</u></p>	<p>INVESTMENT IN SUPRANATIONAL INSTITUTIONS Nancy Rodriguez [9] SCC/SCORC/SFC-SCC</p>	<p>"Senate Bill 253 permits the five Class-A counties (Bernalillo, Dona Ana, San Juan, Sandoval and Santa Fe), Albuquerque, Las Cruces, Rio Rancho and Santa Fe and the State Treasurer's Office to purchase the obligations of supranational entities operating within the United States."</p>
<p><u>SB 256</u></p>	<p>MUNICIPALITY REGULATION OF PANHANDLING Pete Campos [9] SCC/SPAC/SJC-SCC</p>	<p>"SB 256 would enact a new section of the Municipal Code to provide municipalities with the right to tax, regulate and license panhandlers. It would provide that a person who passively stands or sits with a sign or other indication the person is seeking donations is not a panhandler. The effective date of the proposed legislation would be July 1, 2018."</p>

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2018-__

INTRODUCED BY:

Councilor Mike Harris

AN ORDINANCE

GRANTING CYBER MESA COMPUTER SYSTEMS, INCORPORATED A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Legislative Findings. The governing body of the city of Santa Fe finds that:

A. The granting of a franchise to Cyber Mesa Computer Systems, Inc. (“the Company”), is necessary for the access and use of public rights-of-way to provide telecommunications services within the city limits in accordance with the terms and conditions of this Ordinance and the Telecommunications in the Public Rights-of-Way Ordinance, Article 27-2 SFCC 1987 (“Article 27-2”).

B. The granting of such a franchise permits competitively neutral and

1 non-discriminatory access to the public rights-of-way for providers of telecommunications
2 services; and allows the city to appropriately manage the public rights-of-way in order to
3 minimize the impact and cost to the citizens of the placement of telecommunications facilities
4 within the public rights-of-way.

5 C. The granting of a franchise promotes competition among telecommunications
6 services providers and encourages the universal availability of telecommunications services to
7 residents and businesses of the city through the careful management of public rights-of-way.

8 D. It is the intent of the city in the granting of the franchise to obtain fair and
9 reasonable compensation for the use of public rights-of-way through the collection of fees and
10 charges, and to minimize the congestion, inconvenience, visual impact, and other adverse effects
11 on the public rights-of-way by Company's commercial use of public rights-of-way.

12 E. To the extent permitted by state and federal law, the granting of a franchise
13 allows the city to exercise such other powers, as the city may have to protect the public health,
14 safety, and welfare, ensure the continued quality of telecommunications services, and safeguard
15 the rights of consumers who are residents of the city.

16 F. In accordance with Article 27-2, Company submitted an application for a
17 franchise on September 7, 2012.

18 G. The city is authorized to grant one or more non-exclusive franchises for
19 telecommunications services within the city.

20 H. The city has reviewed Company's application and has determined that granting a
21 franchise in accordance with Article 27-2 is in the public interest and in the interest of the city
22 and its residents.

23 I. This franchise, as it relates to the city's costs, maintenance, management, and
24 necessary regulation of public rights-of-way, will assist in meeting the telecommunications
25 related needs and interests of the community.

1 **Section 2. Franchise Terms.** In exchange for Company's compliance with the
2 terms of this Ordinance, the provisions of Article 27-2, and other applicable city codes, there is
3 hereby granted by the city to Company permission to use public rights-of-way to provide
4 telecommunications services. All terms of Article 27-2 shall control Company's use of the public
5 rights-of-way except as specifically set out in this Ordinance.

6 **A. Short Title; Purpose; Applicability.**

7 (1) This Ordinance shall be cited as the "Cyber Mesa Franchise Ordinance".

8 (2) The purpose of this Ordinance is to grant Company, the right, privilege,
9 and authority to:

10 (a) Furnish and distribute telecommunications services in the city,
11 by means of its network, on, over, under, along and across public rights-of-way,
12 now or hereafter included in the boundaries of the city as such boundaries now
13 exist or may hereafter be extended; and

14 (b) Construct, purchase, acquire, locate, maintain, and extend into,
15 within, and through the city, a telecommunications network for the period and
16 upon the terms and conditions specified in this franchise comprised of all
17 facilities and equipment used by Company to provide telecommunications
18 services, including but not limited to "Backhaul Equipment" and "Wireless
19 Communication Equipment."

20 This permission is not exclusive and does not prevent the city from
21 issuing other franchises or authorizations or prevent the city itself from
22 constructing or operating its own telecommunications network within the public
23 rights-of-way, with or without a franchise.

24 (3) This franchise applies to the placement of telecommunications facilities
25 in the city's public rights-of-way.

1 **B. Definitions.**

2 *Bad Debt* means any portion of a debt that is related to a sale of telecommunications at
3 retail, for which gross charges are not otherwise deductible or excludable, that has become
4 worthless or uncollectible as determined under applicable federal income tax standards.

5 *Department* means the department of public works.

6 *Gross Charge*.

7 (1) Includes all revenues derived directly or indirectly by a Provider from or in
8 connection with the Telecommunications Services offered within the City through or by means of
9 a Telecommunications Network within the City, exclusive of any Franchise Fee or tax passed
10 through to consumers on behalf of governmental agencies, received by the Provider for services
11 provided to customers through use of the Network. *Gross Charge* shall include any revenue
12 received by a Provider or any Affiliate through any means that is intended to have the effect of
13 evading the payment of compensation that would otherwise be paid to the City for Franchise
14 Contract granted pursuant to this ordinance.

15 (2) *Gross Charge* shall not include (i) proceeds from the sale of bonds, mortgages, or
16 other evidence of indebtedness, securities, or stocks; or (ii) gross receipts taxes, bad debt write-
17 offs, and customer credits; or (iii) revenue of any Affiliate or Provider from long distance service,
18 commercial mobile radio service, cellular, personal communications service, other wireless
19 communications service, or directory advertising. Each of the above are not included in the
20 definition of *Gross Charge* and, therefore, are not included in the calculation of any fee due under
21 a Franchise.

22 (3) *Gross Charge* shall not include the wholesale revenue of any Provider to the extent
23 that the Person providing such wholesale revenue to the Provider pays to the City, pursuant to an
24 agreement with the City, an annual Franchise Fee under § 27-2.5, or an amount equivalent
25 thereto, calculated on the basis of such Person's *Gross Charge* (as defined in this ordinance) from

1 the provision of Telecommunications Service in the City.

2 (4) *Gross Charge* shall be measured and monitored periodically.

3 *Sale of Telecommunications at Retail* means the transmitting, supplying, or furnishing of
4 telecommunications and all services rendered in connection therewith for consideration, other
5 than between a parent corporation and its wholly owned subsidiaries or between wholly owned
6 subsidiaries, but only when the infrastructure maintenance fee imposed by this chapter previously
7 has been paid to a retailer and the gross charge made by one such corporation to another such
8 corporation is not greater than the gross charge paid to the retailer for use or consumption and not
9 for resale.

10 *Service Address* means the location of telecommunications equipment from which
11 telecommunications services are originated or at which telecommunications services are received.
12 If this location is not a defined location, as in the case of wireless telecommunications, paging
13 systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the
14 location of the customer's primary use of the telecommunications equipment as defined by the
15 location in the City where bills are sent.

16 *Telecommunications Network Any System* which includes facilities and/or equipment
17 placed in the Public Rights-of-Way and used to provide any Telecommunications Service.

18 *Telecommunications.*

19 (1) All transmissions between or among points specified by the user of information of the
20 user's choosing (whether voice, video, or data), without change in the form or content of the
21 information as sent and received, where such transmissions are accomplished by means of a
22 Telecommunications Network.

23 (2) *Telecommunications* shall not include cable services as defined in Title 47, Chapter 5,
24 Subchapter V-A of the United States Code, as amended (47 USC § 521 et seq.) and shall not
25 include telecommunications services provided and used by a public utility as that term is defined

1 at § 62-3-3(G) NMSA 1978, or successor statute, for (i) its internal system communication needs;
2 and (ii) provided directly or indirectly to its customers, including but not limited to electronic
3 meter reading, load control, demand side management, power quality monitoring, and other
4 activities related to the delivery of electricity or natural gas.

5 *Telecommunications Provider ("Provider")* means:

6 (1) Any Person who provides any Telecommunications Service within the City by means of: (i) a
7 Telecommunications Network owned by such Person or its Affiliate; (ii) specifically identifiable
8 facilities of a Telecommunications Network reserved or made available for the use of such Person
9 or its Affiliate under a lease or any other arrangement for a term longer than 120 days; or (iii)
10 facilities of a Telecommunications Network not owned by such Person or its Affiliate and not
11 specifically identifiable but obtained from another Person (including another Provider) if the use
12 of such facilities is continuing and substantial. A Person owning or operating telecommunications
13 facilities that merely pass through the City and such Person and facilities do not offer
14 Telecommunications Service to subscribers within the City shall not be subject to this ordinance,
15 provided that Person has received other appropriate authorization from the City to rent or occupy
16 the Public Rights-of-Way.

17 (2) Except to the extent that a *Provider* or a Person uses the Public Rights-of-Way, a *Provider* or
18 any Person which provides commercial mobile radio service, cellular, personal communications
19 service, or other wireless communications service shall not be subject to this ordinance with
20 respect to such service.

21 *Telecommunications Service*. The offering of Telecommunications within the City for a fee
22 directly to the public, or to such classes of users as to be effectively available directly to the
23 public. *Trenchless excavation* means any line installation, replacement or rehabilitation
24 through the use of boring, jacking, horizontal drilling or tunneling.

25 *Wireless Telecommunications* includes cellular mobile telephone services, personal

1 wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public
2 Law Number 104-104), as now or hereafter amended, including all commercial mobile radio
3 services and paging services.

4 **C. Infrastructure Maintenance Franchise Fee.**

5 1. Pursuant to the authority granted by section § 3-42-1 NMSA 1978 and 47 U.S.C.
6 253(c), there is hereby imposed an infrastructure maintenance franchise fee upon the Company at
7 the rate of two percent (2%) of all gross charges charged by the Company to a service address in
8 the city for telecommunications originating or received in the city.

9 2. The fee imposed by this chapter shall not be imposed in any circumstances in
10 which the imposition of the fee would violate the Constitution or statutes of the United States.

11 **D. Filing Returns and Payment of Franchise Fee.**

12 1. On or before the last day of each quarter, the Company is required to pay the
13 infrastructure maintenance fee imposed by this chapter and shall file with the City a remittance
14 return and shall pay the fee attributable to gross charges for the preceding calendar month. The
15 return shall contain such information as the director may reasonably require.

16 2. No later than February 28th of each year beginning in 2019, the Company shall
17 provide to the City a report certified by an independent certified public accountant attesting to the
18 amount of the infrastructure maintenance fees paid to the department for the preceding calendar
19 year, and that such amount complies with the requirements of this chapter.

20 **E. Collection of Additional Charges by Retailers.**

21 1. When the Company makes or effectuates a sale of telecommunications at retail, it
22 shall pay the infrastructure maintenance fee to the department as provided by section C, of this
23 chapter. The fee shall constitute a debt owed by the retailer to the city.

24 2. The retailer may charge each customer an additional charge in an amount equal
25 to the infrastructure maintenance fee attributed to the customer's service address in the city. This

1 additional charge to customers shall, when collected, be stated as a distinct item on the bill to
2 each customer separate and apart from the retailer's gross charges to its customers for
3 telecommunications.

4 3. Each retailer may retain 2% of the additional charges it collects under this
5 chapter to reimburse itself for expenses incurred in connection with accounting for and remitting
6 the fee to the department.

7 **F. Registration of Providers and Resellers.**

8 1. Within ninety (90) days after the effective date of the ordinance authorizing a
9 franchise with the Company, the Company shall provide the name and address of every
10 telecommunications reseller or other telecommunications company with whom the Company has
11 a contractual relationship to provide telecommunications services or to make available
12 telecommunications facilities in the public way. The Company shall have a continuing duty to file
13 with the City, within 45 days after the date of occurrence of any changes in the information
14 provided to the City, including the creation or termination of a contractual relationship described
15 herein.

16 2. *Resales.*

17 Whenever amounts are claimed to be excluded from gross charges as sales for resale, the
18 reseller shall furnish to the Company the reseller's resale information. The Company shall retain
19 the resale information with its books and records.

20 **G. Maintaining Books and Records.**

21 The Company shall keep accurate books and records of its business or activity, including
22 original source documents and books of entry denoting the transactions that gave rise, or may
23 have given rise, to any liability or exemption. All such books and records shall, at all times during
24 business hours of the day, be subject to and available for inspection by the department with
25 twenty-four (24) hour notice.

1 **H. Insurance Requirements.** Company shall comply with the provisions of
2 Section 27-2.9 SFCC 1987, and Company shall obtain and maintain in full force and effect
3 throughout the term of this franchise the following types of insurance:

- 4 (1) Commercial comprehensive general liability insurance;
- 5 (2) Workers' Compensation insurance as required by law; and
- 6 (3) Commercial automobile liability insurance providing a minimum
7 coverage in the amount required under the New Mexico Tort Claims Act.

8 **I. Term of Franchise.** The term of this franchise, and the rights, privileges, and
9 authority granted hereunder shall continue for a period of ten (10) years from the effective date
10 hereof. The term of this franchise shall automatically be renewed annually unless Company
11 provides notice to City of its intent not to renew at least thirty (30) days prior to expiration of the
12 then current term. Company may surrender permits at any time and remove its
13 telecommunications facilities at any particular location upon thirty (30) days' prior written notice
14 to City. Company shall not be obligated to pay the franchise fee for such location following
15 removal of its telecommunications facilities.

16 **J. Indemnity.** Company and City agree to defend, indemnify, and hold harmless
17 each other and its officials, agents, volunteers, and employees from and against any and all
18 claims, actions, suits, or proceedings of any kind brought against said parties because of any
19 injury or damage received or sustained by any person, persons, or property arising out of or
20 resulting from the activities of the indemnifying party pursuant to this franchise, except to the
21 extent caused by the negligence or willful misconduct of the indemnitee or by reason of any
22 asserted act or omission, neglect, or misconduct of the indemnitee, or its agents or employees, or
23 any subcontractor or its agents or employees. The indemnity required hereunder shall not be
24 limited by reason of the specification of any particular insurance coverage. Neither party shall be
25 liable to the other for consequential, indirect or punitive damages (including lost revenues, loss of

1 service, or loss of data) for any cause of action, whether in contract, tort or otherwise, even if the
2 party was or should have been aware of the possibility of these damages, whether under theory of
3 contract, tort (including negligence), strict liability or otherwise. The maximum liability of either
4 party to the other hereunder shall be the amount paid or payable during the preceding twelve (12)
5 months.

6 **K. Violations and Penalties.** If the Company fails to pay the infrastructure
7 maintenance franchise fee, as provided by this Chapter, the Company shall be subject to a fine of
8 \$100 for each day that the failure to pay continues. Each day that the Company fails to pay shall
9 constitute a separate and distinct violation under this Chapter. Any retailer that becomes subject
10 to this fine may be enjoined from doing business in the City until the Company has paid all sums
11 due under this Chapter.

12 Any telecommunications company who otherwise violates this chapter shall be subject to
13 a fine of \$100 for each offense. Each day the violation continues shall constitute a separate
14 offense.

15 **L. Dispute Resolution Provision.**

16 1. In the event of any other dispute arising from or relating to the franchise or
17 breach thereof, and if the dispute cannot be settled through negotiations, the following process
18 will be followed during which any of the above remedies and penalties may be imposed.

19 2. All disputes will be mediated prior to litigation. The costs of such mediation will
20 be equally split. The place of the mediation session shall be in Santa Fe, New Mexico. The city
21 and the Company will select a mediator or mediators by mutual agreement and, in cooperation
22 with the mediator(s), shall determine all necessary rules and procedures for the mediation. The
23 city and the Company will fully cooperate in the mediation activities. All mediation
24 communications shall be confidential, not subject to disclosure and shall not be used as evidence
25 in any arbitration, judicial, or administrative proceeding, as set forth in the Mediation Procedures

1 Act, NMSA 1978, §§ 44-7b-1 through 44-7b-6.

2 **M. Unauthorized Use of Public Rights-Of-Way Unlawful.** In accordance with
3 Section 27-2.12 SFCC 1987, Company shall not:

4 (1) Use public rights-of-way without authorization to provide
5 telecommunications services.

6 (2) Place facilities on public structures or public utility infrastructure to
7 provide telecommunications services which are not allowed under the terms of this
8 franchise.

9 Each unauthorized use shall be deemed to be a distinct and separate offense. The provisions of
10 this paragraph do not apply to any dispute between the city and Company under this franchise
11 where the city alleges that Company has failed to comply with the terms of this franchise.

12 **N. Land Use Review.** After approval of this franchise by the governing body, if
13 Company proposes to construct additional telecommunications facilities the applicant shall
14 comply with the provisions of 27-2.19.

15 **O. Compliance with Law.**

16 (1) Company and City shall comply with the terms and conditions of
17 Article 27-2 SFCC 1987 except as set forth herein, all other applicable city ordinances,
18 and federal and state laws.

19 (2) Company is explicitly subject to the police powers of the city, all other
20 applicable governmental powers, and the city's rights under state and federal laws.

21 **P. Severability.** The requirements and provisions of this Ordinance and its
22 sections, parts, subparts, paragraphs, and clauses are severable. In the event that any requirement,
23 provision, section, part, subpart, paragraph, or clause of this Ordinance, or the application thereof
24 to any person or circumstance, is held by a court of competent jurisdiction to be invalid or
25 unenforceable, it is the intent of the governing body that the remainder of the Ordinance be

1 enforced to the maximum extent possible consistent with the purposes of this Ordinance.

2 **Q. Effective Date; Publication.** As provided by NMSA 1978, Section 3-42-1, this
3 Ordinance shall not become effective until at least thirty (30) days after its adoption, during
4 which time this Ordinance shall be twice published in full, not less than seven days apart. As
5 required by law, Company shall pay the publication cost.

6 **R. Acceptance.** Company, within thirty (30) days of the date of adoption of this
7 Ordinance, shall file with the city clerk an unconditional acceptance of this Ordinance, on a form
8 prescribed by the city. Within ten (10) days after the filing of the acceptance, the city clerk shall
9 acknowledge in writing the receipt of Company's acceptance. If Company does not file said
10 acceptance this Ordinance shall not be or become effective.

11 **S. Notice.** For the purpose of this Ordinance:

12 (1) Notice to the city shall be to:
13 City Manager
14 City of Santa Fe
15 Post Office Box 909
16 Santa Fe, New Mexico 87504-0909

17 With a copy to:
18 City Attorney
19 City of Santa Fe
20 Post Office Box 909
21 Santa Fe, New Mexico 87504-0909

22 (2) Notice to Company will be to:
23 Attn.: Jane Hill, President
24 Cyber Mesa Computer Systems, Inc.
25 4200 Rodeo Road

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Santa Fe, NM 87507

(3) Notice shall be effective upon delivery at the above addresses until the city or Company notifies the other in writing, of a change in address. All notices shall be delivered personally or sent by certified mail, return receipt requested to the parties at their respective addresses set forth above.

APPROVED AS TO FORM:

KELLEY BRENNAN, CITY ATTORNEY

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2018-__

INTRODUCED BY:

Councilor Mike Harris

AN ORDINANCE

GRANTING PLATEAU TELECOMMUNICATIONS, INCORPORATED A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Legislative Findings. The governing body of the city of Santa Fe finds that:

A. The granting of a franchise to Plateau Telecommunications, Incorporated (“the Company”), is necessary for the access and use of public rights-of-way to provide telecommunications services within the city limits in accordance with the terms and conditions of this Ordinance and the Telecommunications in the Public Rights-of-Way Ordinance, Article 27-2 SFCC 1987 (“Article 27-2”).

B. The granting of such a franchise permits competitively neutral and

1 non-discriminatory access to the public rights-of-way for providers of telecommunications
2 services; and allows the city to appropriately manage the public rights-of-way in order to
3 minimize the impact and cost to the citizens of the placement of telecommunications facilities
4 within the public rights-of-way.

5 C. The granting of a franchise promotes competition among telecommunications
6 services providers and encourages the universal availability of telecommunications services to
7 residents and businesses of the city through the careful management of public rights-of-way.

8 D. It is the intent of the city in the granting of the franchise to obtain fair and
9 reasonable compensation for the use of public rights-of-way through the collection of fees and
10 charges, and to minimize the congestion, inconvenience, visual impact, and other adverse effects
11 on the public rights-of-way by Company's commercial use of public rights-of-way.

12 E. To the extent permitted by state and federal law, the granting of a franchise
13 allows the city to exercise such other powers, as the city may have to protect the public health,
14 safety, and welfare, ensure the continued quality of telecommunications services, and safeguard
15 the rights of consumers who are residents of the city.

16 F. In accordance with Article 27-2, Company submitted an application for a
17 franchise on September 8, 2011.

18 G. The city is authorized to grant one or more non-exclusive franchises for
19 telecommunications services within the city.

20 H. The city has reviewed Company's application and has determined that granting a
21 franchise in accordance with Article 27-2 is in the public interest and in the interest of the city
22 and its residents.

23 I. This franchise, as it relates to the city's costs, maintenance, management, and
24 necessary regulation of public rights-of-way, will assist in meeting the telecommunications
25 related needs and interests of the community.

1 **Section 2. Franchise Terms.** In exchange for Company’s compliance with the
2 terms of this Ordinance, the provisions of Article 27-2, and other applicable city codes, there is
3 hereby granted by the city to Company permission to use public rights-of-way to provide
4 telecommunications services. All terms of Article 27-2 shall control Company’s use of the public
5 rights-of-way except as specifically set out in this Ordinance.

6 **A. Short Title; Purpose; Applicability.**

7 (1) This Ordinance shall be cited as the “Plateau Telecommunications
8 Franchise Ordinance”.

9 (2) The purpose of this Ordinance is to grant Company, the right, privilege,
10 and authority to:

11 (a) Furnish and distribute telecommunications services in the city,
12 by means of its network, on, over, under, along and across public rights-of-way,
13 now or hereafter included in the boundaries of the city as such boundaries now
14 exist or may hereafter be extended; and

15 (b) Construct, purchase, acquire, locate, maintain, and extend into,
16 within, and through the city, a telecommunications network for the period and
17 upon the terms and conditions specified in this franchise comprised of all
18 facilities and equipment used by Company to provide telecommunications
19 services, including but not limited to “Backhaul Equipment” and “Wireless
20 Communication Equipment.”

21 This permission is not exclusive and does not prevent the city from
22 issuing other franchises or authorizations or prevent the city itself from
23 constructing or operating its own telecommunications network within the public
24 rights-of-way, with or without a franchise.

25 (3) This franchise applies to the placement of telecommunications facilities

1 in the city's public rights-of-way.

2 **B. Definitions.**

3 *Bad Debt* means any portion of a debt that is related to a sale of telecommunications at
4 retail, for which gross charges are not otherwise deductible or excludable, that has become
5 worthless or uncollectible as determined under applicable federal income tax standards.

6 *Department* means the department of public works.

7 *Gross Charge*.

8 (1) Includes all revenues derived directly or indirectly by a Provider from or in
9 connection with the Telecommunications Services offered within the City through or by means of
10 a Telecommunications Network within the City, exclusive of any Franchise Fee or tax passed
11 through to consumers on behalf of governmental agencies, received by the Provider for services
12 provided to customers through use of the Network. *Gross Charge* shall include any revenue
13 received by a Provider or any Affiliate through any means that is intended to have the effect of
14 evading the payment of compensation that would otherwise be paid to the City for Franchise
15 Contract granted pursuant to this ordinance.

16 (2) *Gross Charge* shall not include (i) proceeds from the sale of bonds, mortgages, or
17 other evidence of indebtedness, securities, or stocks; or (ii) gross receipts taxes, bad debt write-
18 offs, and customer credits; or (iii) revenue of any Affiliate or Provider from long distance service,
19 commercial mobile radio service, cellular, personal communications service, other wireless
20 communications service, or directory advertising. Each of the above are not included in the
21 definition of *Gross Charge* and, therefore, are not included in the calculation of any fee due under
22 a Franchise.

23 (3) *Gross Charge* shall not include the wholesale revenue of any Provider to the extent
24 that the Person providing such wholesale revenue to the Provider pays to the City, pursuant to an
25 agreement with the City, an annual Franchise Fee under § 27-2.5, or an amount equivalent

1 thereto, calculated on the basis of such Person's *Gross Charge* (as defined in this ordinance) from
2 the provision of Telecommunications Service in the City.

3 (4) *Gross Charge* shall be measured and monitored periodically.

4 *Sale of Telecommunications at Retail* means the transmitting, supplying, or furnishing of
5 telecommunications and all services rendered in connection therewith for consideration, other
6 than between a parent corporation and its wholly owned subsidiaries or between wholly owned
7 subsidiaries, but only when the infrastructure maintenance fee imposed by this chapter previously
8 has been paid to a retailer and the gross charge made by one such corporation to another such
9 corporation is not greater than the gross charge paid to the retailer for use or consumption and not
10 for resale.

11 *Service Address* means the location of telecommunications equipment from which
12 telecommunications services are originated or at which telecommunications services are received.
13 If this location is not a defined location, as in the case of wireless telecommunications, paging
14 systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the
15 location of the customer's primary use of the telecommunications equipment as defined by the
16 location in the City where bills are sent.

17 *Telecommunications Network* Any System which includes facilities and/or equipment
18 placed in the Public Rights-of-Way and used to provide any Telecommunications Service.

19 *Telecommunications.*

20 (1) All transmissions between or among points specified by the user of information of the
21 user's choosing (whether voice, video, or data), without change in the form or content of the
22 information as sent and received, where such transmissions are accomplished by means of a
23 Telecommunications Network.

24 (2) *Telecommunications* shall not include cable services as defined in Title 47, Chapter 5,
25 Subchapter V-A of the United States Code, as amended (47 USC § 521 et seq.) and shall not

1 include telecommunications services provided and used by a public utility as that term is defined
2 at § 62-3-3(G) NMSA 1978, or successor statute, for (i) its internal system communication needs;
3 and (ii) provided directly or indirectly to its customers, including but not limited to electronic
4 meter reading, load control, demand side management, power quality monitoring, and other
5 activities related to the delivery of electricity or natural gas.

6 *Telecommunications Provider ("Provider")* means:

7 (1) Any Person who provides any Telecommunications Service within the City by means of: (i) a
8 Telecommunications Network owned by such Person or its Affiliate; (ii) specifically identifiable
9 facilities of a Telecommunications Network reserved or made available for the use of such Person
10 or its Affiliate under a lease or any other arrangement for a term longer than 120 days; or (iii)
11 facilities of a Telecommunications Network not owned by such Person or its Affiliate and not
12 specifically identifiable but obtained from another Person (including another Provider) if the use
13 of such facilities is continuing and substantial. A Person owning or operating telecommunications
14 facilities that merely pass through the City and such Person and facilities do not offer
15 Telecommunications Service to subscribers within the City shall not be subject to this ordinance,
16 provided that Person has received other appropriate authorization from the City to rent or occupy
17 the Public Rights-of-Way.

18 (2) Except to the extent that a *Provider* or a Person uses the Public Rights-of-Way, a *Provider* or
19 any Person which provides commercial mobile radio service, cellular, personal communications
20 service, or other wireless communications service shall not be subject to this ordinance with
21 respect to such service.

22 *Telecommunications Service.* The offering of Telecommunications within the City for a
23 fee directly to the public, or to such classes of users as to be effectively available directly to the
24 public.

25 *Trenchless excavation* means any line installation, replacement or rehabilitation through

1 the use of boring, jacking, horizontal drilling or tunneling.

2 *Wireless Telecommunications* includes cellular mobile telephone services, personal
3 wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public
4 Law Number 104-104), as now or hereafter amended, including all commercial mobile radio
5 services and paging services.

6 **C. Infrastructure Maintenance Franchise Fee.**

7 1. Pursuant to the authority granted by section § 3-42-1 NMSA 1978 and 47 U.S.C.
8 253(c), there is hereby imposed an infrastructure maintenance franchise fee upon the Company at
9 the rate of two percent (2%) of all gross charges charged by the Company to a service address in
10 the city for telecommunications originating or received in the city.

11 2. The fee imposed by this chapter shall not be imposed in any circumstances in
12 which the imposition of the fee would violate the Constitution or statutes of the United States.

13 **D. Filing Returns and Payment of Franchise Fee.**

14 1. On or before the last day of each quarter, the Company is required to pay the
15 infrastructure maintenance fee imposed by this chapter and shall file with the City a remittance
16 return and shall pay the fee attributable to gross charges for the preceding calendar month. The
17 return shall contain such information as the director may reasonably require.

18 2. No later than February 28th of each year beginning in 2019, the Company shall
19 provide to the City a report certified by an independent certified public accountant attesting to the
20 amount of the infrastructure maintenance fees paid to the department for the preceding calendar
21 year, and that such amount complies with the requirements of this chapter.

22 **E. Collection of Additional Charges by Retailers.**

23 1. When the Company makes or effectuates a sale of telecommunications at retail, it
24 shall pay the infrastructure maintenance fee to the department as provided by section C, of this
25 chapter. The fee shall constitute a debt owed by the retailer to the city.

1 2. The retailer may charge each customer an additional charge in an amount equal
2 to the infrastructure maintenance fee attributed to the customer's service address in the city. This
3 additional charge to customers shall, when collected, be stated as a distinct item on the bill to
4 each customer separate and apart from the retailer's gross charges to its customers for
5 telecommunications.

6 3. Each retailer may retain 2% of the additional charges it collects under this
7 chapter to reimburse itself for expenses incurred in connection with accounting for and remitting
8 the fee to the department.

9 **F. Registration of Providers and Resellers.**

10 1. Within ninety (90) days after the effective date of the ordinance authorizing a
11 franchise with the Company, the Company shall provide the name and address of every
12 telecommunications reseller or other telecommunications company with whom the Company has
13 a contractual relationship to provide telecommunications services or to make available
14 telecommunications facilities in the public way. The Company shall have a continuing duty to file
15 with the City, within 45 days after the date of occurrence of any changes in the information
16 provided to the City, including the creation or termination of a contractual relationship described
17 herein.

18 2. *Resales.*

19 Whenever amounts are claimed to be excluded from gross charges as sales for resale, the
20 reseller shall furnish to the Company the reseller's resale information. The Company shall retain
21 the resale information with its books and records.

22 **G. Maintaining Books and Records.**

23 The Company shall keep accurate books and records of its business or activity, including
24 original source documents and books of entry denoting the transactions that gave rise, or may
25 have given rise, to any liability or exemption. All such books and records shall, at all times during

1 business hours of the day, be subject to and available for inspection by the department with
2 twenty-four (24) hour notice.

3 **H. Insurance Requirements.** Company shall comply with the provisions of
4 Section 27-2.9 SFCC 1987, and Company shall obtain and maintain in full force and effect
5 throughout the term of this franchise the following types of insurance:

- 6 (1) Commercial comprehensive general liability insurance;
- 7 (2) Workers' Compensation insurance as required by law; and
- 8 (3) Commercial automobile liability insurance providing a minimum
9 coverage in the amount required under the New Mexico Tort Claims Act.

10 **I. Term of Franchise.** The term of this franchise, and the rights, privileges, and
11 authority granted hereunder shall continue for a period of ten (10) years from the effective date
12 hereof. The term of this franchise shall automatically be renewed annually unless Company
13 provides notice to City of its intent not to renew at least thirty (30) days prior to expiration of the
14 then current term. Company may surrender permits at any time and remove its
15 telecommunications facilities at any particular location upon thirty (30) days' prior written notice
16 to City. Company shall not be obligated to pay the franchise fee for such location following
17 removal of its telecommunications facilities.

18 **J. Indemnity.** Company and City agree to defend, indemnify, and hold harmless
19 each other and its officials, agents, volunteers, and employees from and against any and all
20 claims, actions, suits, or proceedings of any kind brought against said parties because of any
21 injury or damage received or sustained by any person, persons, or property arising out of or
22 resulting from the activities of the indemnifying party pursuant to this franchise, except to the
23 extent caused by the negligence or willful misconduct of the indemnitee or by reason of any
24 asserted act or omission, neglect, or misconduct of the indemnitee, or it's agents or employees, or
25 any subcontractor or its agents or employees. The indemnity required hereunder shall not be

1 limited by reason of the specification of any particular insurance coverage. Neither party shall be
2 liable to the other for consequential, indirect or punitive damages (including lost revenues, loss of
3 service, or loss of data) for any cause of action, whether in contract, tort or otherwise, even if the
4 party was or should have been aware of the possibility of these damages, whether under theory of
5 contract, tort (including negligence), strict liability or otherwise. The maximum liability of either
6 party to the other hereunder shall be the amount paid or payable during the preceding twelve (12)
7 months.

8 **K. Violations and Penalties.** If the Company fails to pay the infrastructure
9 maintenance franchise fee, as provided by this Chapter, the Company shall be subject to a fine of
10 \$100 for each day that the failure to pay continues. Each day that the Company fails to pay shall
11 constitute a separate and distinct violation under this Chapter. Any retailer that becomes subject
12 to this fine may be enjoined from doing business in the City until the Company has paid all sums
13 due under this Chapter.

14 Any telecommunications company who otherwise violates this chapter shall be subject to
15 a fine of \$100 for each offense. Each day the violation continues shall constitute a separate
16 offense.

17 **L. Dispute Resolution Provision.**

18 1. In the event of any other dispute arising from or relating to the franchise or
19 breach thereof, and if the dispute cannot be settled through negotiations, the following process
20 will be followed during which any of the above remedies and penalties may be imposed.

21 2. All disputes will be mediated prior to litigation. The costs of such mediation will
22 be equally split. The place of the mediation session shall be in Santa Fe, New Mexico. The city
23 and the Company will select a mediator or mediators by mutual agreement and, in cooperation
24 with the mediator(s), shall determine all necessary rules and procedures for the mediation. The
25 city and the Company will fully cooperate in the mediation activities. All mediation

1 communications shall be confidential, not subject to disclosure and shall not be used as evidence
2 in any arbitration, judicial, or administrative proceeding, as set forth in the Mediation Procedures
3 Act, NMSA 1978, §§ 44-7b-1 through 44-7b-6.

4 **M. Unauthorized Use of Public Rights-Of-Way Unlawful.** In accordance with
5 Section 27-2.12 SFCC 1987, Company shall not:

6 (1) Use public rights-of-way without authorization to provide
7 telecommunications services.

8 (2) Place facilities on public structures or public utility infrastructure to
9 provide telecommunications services which are not allowed under the terms of this
10 franchise.

11 Each unauthorized use shall be deemed to be a distinct and separate offense. The provisions of
12 this paragraph do not apply to any dispute between the city and Company under this franchise
13 where the city alleges that Company has failed to comply with the terms of this franchise.

14 **N. Land Use Review.** After approval of this franchise by the governing body, if
15 Company proposes to construct additional telecommunications facilities the applicant shall
16 comply with the provisions of 27-2.19.

17 **O. Compliance with Law.**

18 (1) Company and City shall comply with the terms and conditions of
19 Article 27-2 SFCC 1987 except as set forth herein, all other applicable city ordinances,
20 and federal and state laws.

21 (2) Company is explicitly subject to the police powers of the city, all other
22 applicable governmental powers, and the city's rights under state and federal laws.

23 **P. Severability.** The requirements and provisions of this Ordinance and its
24 sections, parts, subparts, paragraphs, and clauses are severable. In the event that any requirement,
25 provision, section, part, subpart, paragraph, or clause of this Ordinance, or the application thereof

1 to any person or circumstance, is held by a court of competent jurisdiction to be invalid or
2 unenforceable, it is the intent of the governing body that the remainder of the Ordinance be
3 enforced to the maximum extent possible consistent with the purposes of this Ordinance.

4 **Q. Effective Date; Publication.** As provided by NMSA 1978, Section 3-42-1, this
5 Ordinance shall not become effective until at least thirty (30) days after its adoption, during
6 which time this Ordinance shall be twice published in full, not less than seven days apart. As
7 required by law, Company shall pay the publication cost.

8 **R. Acceptance.** Company, within thirty (30) days of the date of adoption of this
9 Ordinance, shall file with the city clerk an unconditional acceptance of this Ordinance, on a form
10 prescribed by the city. Within ten (10) days after the filing of the acceptance, the city clerk shall
11 acknowledge in writing the receipt of Company's acceptance. If Company does not file said
12 acceptance this Ordinance shall not be or become effective.

13 10

14 **S. Notice.** For the purpose of this Ordinance:

15 (1) Notice to the city shall be to:
16 City Manager
17 City of Santa Fe
18 Post Office Box 909
19 Santa Fe, New Mexico 87504-0909

20 With a copy to:
21 City Attorney
22 City of Santa Fe
23 Post Office Box 909
24 Santa Fe, New Mexico 87504-0909

25 (2) Notice to Company will be to:

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Attn.: Launa Waller, Regulatory Manager
Plateau Telecommunications, Inc.
7111 North Prince Street
Clovis, NM 88101

(3) Notice shall be effective upon delivery at the above addresses until the city or Company notifies the other in writing, of a change in address. All notices shall be delivered personally or sent by certified mail, return receipt requested to the parties at their respective addresses set forth above.

APPROVED AS TO FORM:

KELLEY BRENNAN, CITY ATTORNEY

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2018-__

INTRODUCED BY:

Councilor Mike Harris

AN ORDINANCE

GRANTING CONTERRA ULTRA BROADBAND, LLC A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Legislative Findings. The governing body of the city of Santa Fe finds that:

A. The granting of a franchise to **Conterra Ultra Broadband, LLC** (“the Company”), is necessary for the access and use of public rights-of-way to provide telecommunications services within the city limits in accordance with the terms and conditions of this Ordinance and the Telecommunications in the Public Rights-of-Way Ordinance, Article 27-2 SFCC 1987 (“Article 27-2”).

B. The granting of such a franchise permits competitively neutral and

1 non-discriminatory access to the public rights-of-way for providers of telecommunications
2 services; and allows the city to appropriately manage the public rights-of-way in order to
3 minimize the impact and cost to the citizens of the placement of telecommunications facilities
4 within the public rights-of-way.

5 C. The granting of a franchise promotes competition among telecommunications
6 services providers and encourages the universal availability of telecommunications services to
7 residents and businesses of the city through the careful management of public rights-of-way.

8 D. It is the intent of the city in the granting of the franchise to obtain fair and
9 reasonable compensation for the use of public rights-of-way through the collection of fees and
10 charges, and to minimize the congestion, inconvenience, visual impact, and other adverse effects
11 on the public rights-of-way by Company's commercial use of public rights-of-way.

12 E. To the extent permitted by state and federal law, the granting of a franchise
13 allows the city to exercise such other powers, as the city may have to protect the public health,
14 safety, and welfare, ensure the continued quality of telecommunications services, and safeguard
15 the rights of consumers who are residents of the city.

16 F. In accordance with Article 27-2, Company submitted an application for a
17 franchise on November 21, 2017.

18 G. The city is authorized to grant one or more non-exclusive franchises for
19 telecommunications services within the city.

20 H. The city has reviewed Company's application and has determined that granting a
21 franchise in accordance with Article 27-2 is in the public interest and in the interest of the city
22 and its residents.

23 I. This franchise, as it relates to the city's costs, maintenance, management, and
24 necessary regulation of public rights-of-way, will assist in meeting the telecommunications
25 related needs and interests of the community.

1 **Section 2. Franchise Terms.** In exchange for Company's compliance with the
2 terms of this Ordinance, the provisions of Article 27-2, and other applicable city codes, there is
3 hereby granted by the city to Company permission to use public rights-of-way to provide
4 telecommunications services. All terms of Article 27-2 shall control Company's use of the public
5 rights-of-way except as specifically set out in this Ordinance.

6 **A. Short Title; Purpose; Applicability.**

7 (1) This Ordinance shall be cited as the "Conterra Ultra Broadband
8 Franchise Ordinance".

9 (2) The purpose of this Ordinance is to grant Company, the right, privilege,
10 and authority to:

11 (a) Furnish and distribute telecommunications services in the city,
12 by means of its network, on, over, under, along and across public rights-of-way,
13 now or hereafter included in the boundaries of the city as such boundaries now
14 exist or may hereafter be extended; and

15 (b) Construct, purchase, acquire, locate, maintain, and extend into,
16 within, and through the city, a telecommunications network for the period and
17 upon the terms and conditions specified in this franchise comprised of all
18 facilities and equipment used by Company to provide telecommunications
19 services, including but not limited to "Backhaul Equipment" and "Wireless
20 Communication Equipment."

21 This permission is not exclusive and does not prevent the city from
22 issuing other franchises or authorizations or prevent the city itself from
23 constructing or operating its own telecommunications network within the public
24 rights-of-way, with or without a franchise.

25 (3) This franchise applies to the placement of telecommunications facilities

1 in the city's public rights-of-way.

2 **B. Definitions.**

3 *Bad Debt* means any portion of a debt that is related to a sale of telecommunications at
4 retail, for which gross charges are not otherwise deductible or excludable, that has become
5 worthless or uncollectible as determined under applicable federal income tax standards.

6 *Department* means the department of public works.

7 *Gross Charge*.

8 (1) Includes all revenues derived directly or indirectly by a Provider from or in
9 connection with the Telecommunications Services offered within the City through or by means of
10 a Telecommunications Network within the City, exclusive of any Franchise Fee or tax passed
11 through to consumers on behalf of governmental agencies, received by the Provider for services
12 provided to customers through use of the Network. *Gross Charge* shall include any revenue
13 received by a Provider or any Affiliate through any means that is intended to have the effect of
14 evading the payment of compensation that would otherwise be paid to the City for Franchise
15 Contract granted pursuant to this ordinance.

16 (2) *Gross Charge* shall not include (i) proceeds from the sale of bonds, mortgages, or
17 other evidence of indebtedness, securities, or stocks; or (ii) gross receipts taxes, bad debt write-
18 offs, and customer credits; or (iii) revenue of any Affiliate or Provider from long distance service,
19 commercial mobile radio service, cellular, personal communications service, other wireless
20 communications service, or directory advertising. Each of the above are not included in the
21 definition of *Gross Charge* and, therefore, are not included in the calculation of any fee due under
22 a Franchise.

23 (3) *Gross Charge* shall not include the wholesale revenue of any Provider to the extent
24 that the Person providing such wholesale revenue to the Provider pays to the City, pursuant to an
25 agreement with the City, an annual Franchise Fee under § 27-2.5, or an amount equivalent

1 thereto, calculated on the basis of such Person's *Gross Charge* (as defined in this ordinance) from
2 the provision of Telecommunications Service in the City.

3 (4) *Gross Charge* shall be measured and monitored periodically.

4 *Sale of Telecommunications at Retail* means the transmitting, supplying, or furnishing of
5 telecommunications and all services rendered in connection therewith for consideration, other
6 than between a parent corporation and its wholly owned subsidiaries or between wholly owned
7 subsidiaries, but only when the infrastructure maintenance fee imposed by this chapter previously
8 has been paid to a retailer and the gross charge made by one such corporation to another such
9 corporation is not greater than the gross charge paid to the retailer for use or consumption and not
10 for resale.

11 *Service Address* means the location of telecommunications equipment from which
12 telecommunications services are originated or at which telecommunications services are received.
13 If this location is not a defined location, as in the case of wireless telecommunications, paging
14 systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the
15 location of the customer's primary use of the telecommunications equipment as defined by the
16 location in the City where bills are sent.

17 *Telecommunications Network* Any System which includes facilities and/or equipment
18 placed in the Public Rights-of-Way and used to provide any Telecommunications Service.

19 *Telecommunications.*

20 (1) All transmissions between or among points specified by the user of information of the
21 user's choosing (whether voice, video, or data), without change in the form or content of the
22 information as sent and received, where such transmissions are accomplished by means of a
23 Telecommunications Network.

24 (2) *Telecommunications* shall not include cable services as defined in Title 47, Chapter 5,
25 Subchapter V-A of the United States Code, as amended (47 USC § 521 et seq.) and shall not

1 include telecommunications services provided and used by a public utility as that term is defined
2 at § 62-3-3(G) NMSA 1978, or successor statute, for (i) its internal system communication needs;
3 and (ii) provided directly or indirectly to its customers, including but not limited to electronic
4 meter reading, load control, demand side management, power quality monitoring, and other
5 activities related to the delivery of electricity or natural gas.

6 *Telecommunications Provider ("Provider")* means:

7 (1) Any Person who provides any Telecommunications Service within the City by means of: (i) a
8 Telecommunications Network owned by such Person or its Affiliate; (ii) specifically identifiable
9 facilities of a Telecommunications Network reserved or made available for the use of such Person
10 or its Affiliate under a lease or any other arrangement for a term longer than 120 days; or (iii)
11 facilities of a Telecommunications Network not owned by such Person or its Affiliate and not
12 specifically identifiable but obtained from another Person (including another Provider) if the use
13 of such facilities is continuing and substantial. A Person owning or operating telecommunications
14 facilities that merely pass through the City and such Person and facilities do not offer
15 Telecommunications Service to subscribers within the City shall not be subject to this ordinance,
16 provided that Person has received other appropriate authorization from the City to rent or occupy
17 the Public Rights-of-Way.

18 (2) Except to the extent that a *Provider* or a Person uses the Public Rights-of-Way, a *Provider* or
19 any Person which provides commercial mobile radio service, cellular, personal communications
20 service, or other wireless communications service shall not be subject to this ordinance with
21 respect to such service.

22 *Telecommunications Service.* The offering of Telecommunications within the City for a fee
23 directly to the public, or to such classes of users as to be effectively available directly to the
24 public. *Trenchless excavation* means any line installation, replacement or rehabilitation
25 through the use of boring, jacking, horizontal drilling or tunneling.

1 *Wireless Telecommunications* includes cellular mobile telephone services, personal
2 wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public
3 Law Number 104-104), as now or hereafter amended, including all commercial mobile radio
4 services and paging services.

5 **C. Infrastructure Maintenance Franchise Fee.**

6 1. Pursuant to the authority granted by section § 3-42-1 NMSA 1978 and 47 U.S.C.
7 253(c), there is hereby imposed an infrastructure maintenance franchise fee upon the Company at
8 the rate of two percent (2%) of all gross charges charged by the Company to a service address in
9 the city for telecommunications originating or received in the city.

10 2. The fee imposed by this chapter shall not be imposed in any circumstances in
11 which the imposition of the fee would violate the Constitution or statutes of the United States.

12 **D. Filing Returns and Payment of Franchise Fee.**

13 1. On or before the last day of each quarter, the Company is required to pay the
14 infrastructure maintenance fee imposed by this chapter and shall file with the City a remittance
15 return and shall pay the fee attributable to gross charges for the preceding calendar month. The
16 return shall contain such information as the director may reasonably require.

17 2. No later than February 28th of each year beginning in 2019, the Company shall
18 provide to the City a report certified by an independent certified public accountant attesting to the
19 amount of the infrastructure maintenance fees paid to the department for the preceding calendar
20 year, and that such amount complies with the requirements of this chapter.

21 **E. Collection of Additional Charges by Retailers.**

22 1. When the Company makes or effectuates a sale of telecommunications at retail, it
23 shall pay the infrastructure maintenance fee to the department as provided by section C, of this
24 chapter. The fee shall constitute a debt owed by the retailer to the city.

25 2. The retailer may charge each customer an additional charge in an amount equal

1 to the infrastructure maintenance fee attributed to the customer's service address in the city. This
2 additional charge to customers shall, when collected, be stated as a distinct item on the bill to
3 each customer separate and apart from the retailer's gross charges to its customers for
4 telecommunications.

5 3. Each retailer may retain 2% of the additional charges it collects under this
6 chapter to reimburse itself for expenses incurred in connection with accounting for and remitting
7 the fee to the department.

8 **F. Registration of Providers and Resellers.**

9 1. Within ninety (90) days after the effective date of the ordinance authorizing a
10 franchise with the Company, the Company shall provide the name and address of every
11 telecommunications reseller or other telecommunications company with whom the Company has
12 a contractual relationship to provide telecommunications services or to make available
13 telecommunications facilities in the public way. The Company shall have a continuing duty to file
14 with the City, within 45 days after the date of occurrence of any changes in the information
15 provided to the City, including the creation or termination of a contractual relationship described
16 herein.

17 2. *Resales.*

18 Whenever amounts are claimed to be excluded from gross charges as sales for resale, the
19 reseller shall furnish to the Company the reseller's resale information. The Company shall retain
20 the resale information with its books and records.

21 **G. Maintaining Books and Records.**

22 The Company shall keep accurate books and records of its business or activity, including
23 original source documents and books of entry denoting the transactions that gave rise, or may
24 have given rise, to any liability or exemption. All such books and records shall, at all times during
25 business hours of the day, be subject to and available for inspection by the department with

1 twenty-four (24) hour notice.

2 **H. Insurance Requirements.** Company shall comply with the provisions of
3 Section 27-2.9 SFCC 1987, and Company shall obtain and maintain in full force and effect
4 throughout the term of this franchise the following types of insurance:

- 5 (1) Commercial comprehensive general liability insurance;
6 (2) Workers' Compensation insurance as required by law; and
7 (3) Commercial automobile liability insurance providing a minimum
8 coverage in the amount required under the New Mexico Tort Claims Act.

9 **I. Term of Franchise.** The term of this franchise, and the rights, privileges, and
10 authority granted hereunder shall continue for a period of ten (10) years from the effective date
11 hereof. The term of this franchise shall automatically be renewed annually unless Company
12 provides notice to City of its intent not to renew at least thirty (30) days prior to expiration of the
13 then current term. Company may surrender permits at any time and remove its
14 telecommunications facilities at any particular location upon thirty (30) days' prior written notice
15 to City. Company shall not be obligated to pay the franchise fee for such location following
16 removal of its telecommunications facilities.

17 **J. Indemnity.** Company and City agree to defend, indemnify, and hold harmless
18 each other and its officials, agents, volunteers, and employees from and against any and all
19 claims, actions, suits, or proceedings of any kind brought against said parties because of any
20 injury or damage received or sustained by any person, persons, or property arising out of or
21 resulting from the activities of the indemnifying party pursuant to this franchise, except to the
22 extent caused by the negligence or willful misconduct of the indemnitee or by reason of any
23 asserted act or omission, neglect, or misconduct of the indemnitee, or it's agents or employees, or
24 any subcontractor or its agents or employees. The indemnity required hereunder shall not be
25 limited by reason of the specification of any particular insurance coverage. Neither party shall be

1 liable to the other for consequential, indirect or punitive damages (including lost revenues, loss of
2 service, or loss of data) for any cause of action, whether in contract, tort or otherwise, even if the
3 party was or should have been aware of the possibility of these damages, whether under theory of
4 contract, tort (including negligence), strict liability or otherwise. The maximum liability of either
5 party to the other hereunder shall be the amount paid or payable during the preceding twelve (12)
6 months.

7 **K. Violations and Penalties.** If the Company fails to pay the infrastructure
8 maintenance franchise fee, as provided by this Chapter, the Company shall be subject to a fine of
9 \$100 for each day that the failure to pay continues. Each day that the Company fails to pay shall
10 constitute a separate and distinct violation under this Chapter. Any retailer that becomes subject
11 to this fine may be enjoined from doing business in the City until the Company has paid all sums
12 due under this Chapter.

13 Any telecommunications company who otherwise violates this chapter shall be subject to
14 a fine of \$100 for each offense. Each day the violation continues shall constitute a separate
15 offense.

16 **L. Dispute Resolution Provision.**

17 1. In the event of any other dispute arising from or relating to the franchise or
18 breach thereof, and if the dispute cannot be settled through negotiations, the following process
19 will be followed during which any of the above remedies and penalties may be imposed.

20 2. All disputes will be mediated prior to litigation. The costs of such mediation will
21 be equally split. The place of the mediation session shall be in Santa Fe, New Mexico. The city
22 and the Company will select a mediator or mediators by mutual agreement and, in cooperation
23 with the mediator(s), shall determine all necessary rules and procedures for the mediation. The
24 city and the Company will fully cooperate in the mediation activities. All mediation
25 communications shall be confidential, not subject to disclosure and shall not be used as evidence

1 in any arbitration, judicial, or administrative proceeding, as set forth in the Mediation Procedures
2 Act, NMSA 1978, §§ 44-7b-1 through 44-7b-6.

3 **M. Unauthorized Use of Public Rights-Of-Way Unlawful.** In accordance with
4 Section 27-2.12 SFCC 1987, Company shall not:

5 (1) Use public rights-of-way without authorization to provide
6 telecommunications services.

7 (2) Place facilities on public structures or public utility infrastructure to
8 provide telecommunications services which are not allowed under the terms of this
9 franchise.

10 Each unauthorized use shall be deemed to be a distinct and separate offense. The provisions of
11 this paragraph do not apply to any dispute between the city and Company under this franchise
12 where the city alleges that Company has failed to comply with the terms of this franchise.

13 **N. Land Use Review.** After approval of this franchise by the governing body, if
14 Company proposes to construct additional telecommunications facilities the applicant shall
15 comply with the provisions of 27-2.19.

16 **O. Compliance with Law.**

17 (1) Company and City shall comply with the terms and conditions of
18 Article 27-2 SFCC 1987 except as set forth herein, all other applicable city ordinances,
19 and federal and state laws.

20 (2) Company is explicitly subject to the police powers of the city, all other
21 applicable governmental powers, and the city's rights under state and federal laws.

22 **P. Severability.** The requirements and provisions of this Ordinance and its
23 sections, parts, subparts, paragraphs, and clauses are severable. In the event that any requirement,
24 provision, section, part, subpart, paragraph, or clause of this Ordinance, or the application thereof
25 to any person or circumstance, is held by a court of competent jurisdiction to be invalid or

1 unenforceable, it is the intent of the governing body that the remainder of the Ordinance be
2 enforced to the maximum extent possible consistent with the purposes of this Ordinance.

3 **Q. Effective Date; Publication.** As provided by NMSA 1978, Section 3-42-1, this
4 Ordinance shall not become effective until at least thirty (30) days after its adoption, during
5 which time this Ordinance shall be twice published in full, not less than seven days apart. As
6 required by law, Company shall pay the publication cost.

7 **R. Acceptance.** Company, within thirty (30) days of the date of adoption of this
8 Ordinance, shall file with the city clerk an unconditional acceptance of this Ordinance, on a form
9 prescribed by the city. Within ten (10) days after the filing of the acceptance, the city clerk shall
10 acknowledge in writing the receipt of Company's acceptance. If Company does not file said
11 acceptance this Ordinance shall not be or become effective.

12 **S. Notice.** For the purpose of this Ordinance:

13 (1) Notice to the city shall be to:
14 City Manager
15 City of Santa Fe
16 Post Office Box 909
17 Santa Fe, New Mexico 87504-0909

18 With a copy to:
19 City Attorney
20 City of Santa Fe
21 Post Office Box 909
22 Santa Fe, New Mexico 87504-0909

23 (2) Notice to Company will be to:
24 Attn.: Legal Department
25 Conterra Ultra Broadband, LLC

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2101 Rexford Road
Suite 200E
Charlotte, NC 28211

(3) Notice shall be effective upon delivery at the above addresses until the city or Company notifies the other in writing, of a change in address. All notices shall be delivered personally or sent by certified mail, return receipt requested to the parties at their respective addresses set forth above.

APPROVED AS TO FORM:

KELLEY BRENNAN, CITY ATTORNEY

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2018-__

INTRODUE BY:

Councilor Mike Harris

AN ORDINANCE

**GRANTING COMPUTER NETWORK SERVICE PROFESSIONALS, INCORPORATED
DBA NMSURF A NON-EXCLUSIVE FRANCHISE TO OPERATE A
TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE
RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE
TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE
TERMS AND CONDITIONS THEREOF.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Legislative Findings. The governing body of the city of Santa Fe finds
that:

- A. The granting of a franchise to Computer Network Service Professionals, Incorporated dba NMSURF (“the Company”), is necessary for the access and use of public rights-of-way to provide telecommunications services within the city limits in accordance with the terms and conditions of this Ordinance and the Telecommunications in the Public Rights-of-Way Ordinance, Article 27-2 SFCC 1987 (“Article 27-2”).

1 B. The granting of such a franchise permits competitively neutral and
2 non-discriminatory access to the public rights-of-way for providers of telecommunications
3 services; and allows the city to appropriately manage the public rights-of-way in order to
4 minimize the impact and cost to the citizens of the placement of telecommunications facilities
5 within the public rights-of-way.

6 C. The granting of a franchise promotes competition among telecommunications
7 services providers and encourages the universal availability of telecommunications services to
8 residents and businesses of the city through the careful management of public rights-of-way.

9 D. It is the intent of the city in the granting of the franchise to obtain fair and
10 reasonable compensation for the use of public rights-of-way through the collection of fees and
11 charges, and to minimize the congestion, inconvenience, visual impact, and other adverse effects
12 on the public rights-of-way by Company's commercial use of public rights-of-way.

13 E. To the extent permitted by state and federal law, the granting of a franchise
14 allows the city to exercise such other powers, as the city may have to protect the public health,
15 safety, and welfare, ensure the continued quality of telecommunications services, and safeguard
16 the rights of consumers who are residents of the city.

17 F. In accordance with Article 27-2, Company submitted an application for a
18 franchise on January 15, 2015.

19 G. The city is authorized to grant one or more non-exclusive franchises for
20 telecommunications services within the city.

21 H. The city has reviewed Company's application and has determined that granting a
22 franchise in accordance with Article 27-2 is in the public interest and in the interest of the city
23 and its residents.

24 I. This franchise, as it relates to the city's costs, maintenance, management, and
25 necessary regulation of public rights-of-way, will assist in meeting the telecommunications

1 related needs and interests of the community.

2 **Section 2. Franchise Terms.** In exchange for Company's compliance with the
3 terms of this Ordinance, the provisions of Article 27-2, and other applicable city codes, there is
4 hereby granted by the city to Company permission to use public rights-of-way to provide
5 telecommunications services. All terms of Article 27-2 shall control Company's use of the public
6 rights-of-way except as specifically set out in this Ordinance.

7 **A. Short Title; Purpose; Applicability.**

8 (1) This Ordinance shall be cited as the "CNSP Franchise Ordinance".

9 (2) The purpose of this Ordinance is to grant Company, the right, privilege,
10 and authority to:

11 (a) Furnish and distribute telecommunications services in the city,
12 by means of its network, on, over, under, along and across public rights-of-way,
13 now or hereafter included in the boundaries of the city as such boundaries now
14 exist or may hereafter be extended; and

15 (b) Construct, purchase, acquire, locate, maintain, and extend into,
16 within, and through the city, a telecommunications network for the period and
17 upon the terms and conditions specified in this franchise comprised of all
18 facilities and equipment used by Company to provide telecommunications
19 services, including but not limited to "Backhaul Equipment" and "Wireless
20 Communication Equipment."

21 This permission is not exclusive and does not prevent the city from
22 issuing other franchises or authorizations or prevent the city itself from
23 constructing or operating its own telecommunications network within the public
24 rights-of-way, with or without a franchise.

25 (3) This franchise applies to the placement of telecommunications facilities

1 in the city's public rights-of-way.

2 **B. Definitions.**

3 *Bad Debt* means any portion of a debt that is related to a sale of telecommunications at
4 retail, for which gross charges are not otherwise deductible or excludable, that has become
5 worthless or uncollectible as determined under applicable federal income tax standards.

6 *Department* means the department of public works.

7 *Gross Charge*.

8 (1) Includes all revenues derived directly or indirectly by a Provider from or in
9 connection with the Telecommunications Services offered within the City through or by means of
10 a Telecommunications Network within the City, exclusive of any Franchise Fee or tax passed
11 through to consumers on behalf of governmental agencies, received by the Provider for services
12 provided to customers through use of the Network. *Gross Charge* shall include any revenue
13 received by a Provider or any Affiliate through any means that is intended to have the effect of
14 evading the payment of compensation that would otherwise be paid to the City for Franchise
15 Contract granted pursuant to this ordinance.

16 (2) *Gross Charge* shall not include (i) proceeds from the sale of bonds, mortgages, or
17 other evidence of indebtedness, securities, or stocks; or (ii) gross receipts taxes, bad debt write-
18 offs, and customer credits; or (iii) revenue of any Affiliate or Provider from long distance service,
19 commercial mobile radio service, cellular, personal communications service, other wireless
20 communications service, or directory advertising. Each of the above are not included in the
21 definition of *Gross Charge* and, therefore, are not included in the calculation of any fee due under
22 a Franchise.

23 (3) *Gross Charge* shall not include the wholesale revenue of any Provider to the extent
24 that the Person providing such wholesale revenue to the Provider pays to the City, pursuant to an
25 agreement with the City, an annual Franchise Fee under § 27-2.5, or an amount equivalent

1 thereto, calculated on the basis of such Person's *Gross Charge* (as defined in this ordinance) from
2 the provision of Telecommunications Service in the City.

3 (4) *Gross Charge* shall be measured and monitored periodically.

4 *Sale of Telecommunications at Retail* means the transmitting, supplying, or furnishing of
5 telecommunications and all services rendered in connection therewith for consideration, other
6 than between a parent corporation and its wholly owned subsidiaries or between wholly owned
7 subsidiaries, but only when the infrastructure maintenance fee imposed by this chapter previously
8 has been paid to a retailer and the gross charge made by one such corporation to another such
9 corporation is not greater than the gross charge paid to the retailer for use or consumption and not
10 for resale.

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12 telecommunications services are originated or at which telecommunications services are received.
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14 systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the
15 location of the customer's primary use of the telecommunications equipment as defined by the
16 location in the City where bills are sent.

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18 placed in the Public Rights-of-Way and used to provide any Telecommunications Service.

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21 user's choosing (whether voice, video, or data), without change in the form or content of the
22 information as sent and received, where such transmissions are accomplished by means of a
23 Telecommunications Network.

24 (2) *Telecommunications* shall not include cable services as defined in Title 47, Chapter 5,
25 Subchapter V-A of the United States Code, as amended (47 USC § 521 et seq.) and shall not

1 include telecommunications services provided and used by a public utility as that term is defined
2 at § 62-3-3(G) NMSA 1978, or successor statute, for (i) its internal system communication needs;
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4 meter reading, load control, demand side management, power quality monitoring, and other
5 activities related to the delivery of electricity or natural gas.

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8 Telecommunications Network owned by such Person or its Affiliate; (ii) specifically identifiable
9 facilities of a Telecommunications Network reserved or made available for the use of such Person
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6 1. Pursuant to the authority granted by section § 3-42-1 NMSA 1978 and 47 U.S.C.
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8 the rate of two percent (2%) of all gross charges charged by the Company to a service address in
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11 which the imposition of the fee would violate the Constitution or statutes of the United States.

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15 return and shall pay the fee attributable to gross charges for the preceding calendar month. The
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23 original source documents and books of entry denoting the transactions that gave rise, or may
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11 hereof. The term of this franchise shall automatically be renewed annually unless Company
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13 then current term. Company may surrender permits at any time and remove its
14 telecommunications facilities at any particular location upon thirty (30) days' prior written notice
15 to City. Company shall not be obligated to pay the franchise fee for such location following
16 removal of its telecommunications facilities.

17 **J. Indemnity.** Company and City agree to defend, indemnify, and hold harmless
18 each other and its officials, agents, volunteers, and employees from and against any and all
19 claims, actions, suits, or proceedings of any kind brought against said parties because of any
20 injury or damage received or sustained by any person, persons, or property arising out of or
21 resulting from the activities of the indemnifying party pursuant to this franchise, except to the
22 extent caused by the negligence or willful misconduct of the indemnitee or by reason of any
23 asserted act or omission, neglect, or misconduct of the indemnitee, or its agents or employees, or
24 any subcontractor or its agents or employees. The indemnity required hereunder shall not be
25 limited by reason of the specification of any particular insurance coverage. Neither party shall be

1 liable to the other for consequential, indirect or punitive damages (including lost revenues, loss of
2 service, or loss of data) for any cause of action, whether in contract, tort or otherwise, even if the
3 party was or should have been aware of the possibility of these damages, whether under theory of
4 contract, tort (including negligence), strict liability or otherwise. The maximum liability of either
5 party to the other hereunder shall be the amount paid or payable during the preceding twelve (12)
6 months.

7 **K. Violations and Penalties.** If the Company fails to pay the infrastructure
8 maintenance franchise fee, as provided by this Chapter, the Company shall be subject to a fine of
9 \$100 for each day that the failure to pay continues. Each day that the Company fails to pay shall
10 constitute a separate and distinct violation under this Chapter. Any retailer that becomes subject
11 to this fine may be enjoined from doing business in the City until the Company has paid all sums
12 due under this Chapter.

13 Any telecommunications company who otherwise violates this chapter shall be subject to
14 a fine of \$100 for each offense. Each day the violation continues shall constitute a separate
15 offense.

16 **L. Dispute Resolution Provision.**

17 1. In the event of any other dispute arising from or relating to the franchise or
18 breach thereof, and if the dispute cannot be settled through negotiations, the following process
19 will be followed during which any of the above remedies and penalties may be imposed.

20 2. All disputes will be mediated prior to litigation. The costs of such mediation will
21 be equally split. The place of the mediation session shall be in Santa Fe, New Mexico. The city
22 and the Company will select a mediator or mediators by mutual agreement and, in cooperation
23 with the mediator(s), shall determine all necessary rules and procedures for the mediation. The
24 city and the Company will fully cooperate in the mediation activities. All mediation
25 communications shall be confidential, not subject to disclosure and shall not be used as evidence

1 in any arbitration, judicial, or administrative proceeding, as set forth in the Mediation Procedures
2 Act, NMSA 1978, §§ 44-7b-1 through 44-7b-6.

3 **M. Unauthorized Use of Public Rights-Of-Way Unlawful.** In accordance with
4 Section 27-2.12 SFCC 1987, Company shall not:

5 (1) Use public rights-of-way without authorization to provide
6 telecommunications services.

7 (2) Place facilities on public structures or public utility infrastructure to
8 provide telecommunications services which are not allowed under the terms of this
9 franchise.

10 Each unauthorized use shall be deemed to be a distinct and separate offense. The provisions of
11 this paragraph do not apply to any dispute between the city and Company under this franchise
12 where the city alleges that Company has failed to comply with the terms of this franchise.

13 **N. Land Use Review.** After approval of this franchise by the governing body, if
14 Company proposes to construct additional telecommunications facilities the applicant shall
15 comply with the provisions of 27-2.19.

16 **O. Compliance with Law.**

17 (1) Company and City shall comply with the terms and conditions of
18 Article 27-2 SFCC 1987 except as set forth herein, all other applicable city ordinances,
19 and federal and state laws.

20 (2) Company is explicitly subject to the police powers of the city, all other
21 applicable governmental powers, and the city's rights under state and federal laws.

22 **P. Severability.** The requirements and provisions of this Ordinance and its
23 sections, parts, subparts, paragraphs, and clauses are severable. In the event that any requirement,
24 provision, section, part, subpart, paragraph, or clause of this Ordinance, or the application thereof
25 to any person or circumstance, is held by a court of competent jurisdiction to be invalid or

1 unenforceable, it is the intent of the governing body that the remainder of the Ordinance be
2 enforced to the maximum extent possible consistent with the purposes of this Ordinance.

3 **Q. Effective Date; Publication.** As provided by NMSA 1978, Section 3-42-1, this
4 Ordinance shall not become effective until at least thirty (30) days after its adoption, during
5 which time this Ordinance shall be twice published in full, not less than seven days apart. As
6 required by law, Company shall pay the publication cost.

7 **R. Acceptance.** Company, within thirty (30) days of the date of adoption of this
8 Ordinance, shall file with the city clerk an unconditional acceptance of this Ordinance, on a form
9 prescribed by the city. Within ten (10) days after the filing of the acceptance, the city clerk shall
10 acknowledge in writing the receipt of Company's acceptance. If Company does not file said
11 acceptance this Ordinance shall not be or become effective.

12 **S. Notice.** For the purpose of this Ordinance:

13 (1) Notice to the city shall be to:
14 City Manager
15 City of Santa Fe
16 Post Office Box 909
17 Santa Fe, New Mexico 87504-0909

18 With a copy to:
19 City Attorney
20 City of Santa Fe
21 Post Office Box 909
22 Santa Fe, New Mexico 87504-0909

23 (2) Notice to Company will be to:
24 Attn.: Albert Catanach, President
25 CNSP

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1308 Apache Avenue
Santa Fe, NM 87505

(3) Notice shall be effective upon delivery at the above addresses until the city or Company notifies the other in writing, of a change in address. All notices shall be delivered personally or sent by certified mail, return receipt requested to the parties at their respective addresses set forth above.

APPROVED AS TO FORM:

KELLEY BRENNAN, CITY ATTORNEY

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2018-____

INTRODUCED BY:

Councilor Mike Harris

AN ORDINANCE

GRANTING BROADBAND NETWORK OF NEW MEXICO, LLC A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Legislative Findings. The governing body of the city of Santa Fe finds that:

A. The granting of a franchise to Broadband Network of New Mexico, LLC (“the Company”), is necessary for the access and use of public rights-of-way to provide telecommunications services within the city limits in accordance with the terms and conditions of this Ordinance and the Telecommunications in the Public Rights-of-Way Ordinance, Article 27-2 SFCC 1987 (“Article 27-2”).

B. The granting of such a franchise permits competitively neutral and

1 non-discriminatory access to the public rights-of-way for providers of telecommunications
2 services; and allows the city to appropriately manage the public rights-of-way in order to
3 minimize the impact and cost to the citizens of the placement of telecommunications facilities
4 within the public rights-of-way.

5 C. The granting of a franchise promotes competition among telecommunications
6 services providers and encourages the universal availability of telecommunications services to
7 residents and businesses of the city through the careful management of public rights-of-way.

8 D. It is the intent of the city in the granting of the franchise to obtain fair and
9 reasonable compensation for the use of public rights-of-way through the collection of fees and
10 charges, and to minimize the congestion, inconvenience, visual impact, and other adverse effects
11 on the public rights-of-way by Company's commercial use of public rights-of-way.

12 E. To the extent permitted by state and federal law, the granting of a franchise
13 allows the city to exercise such other powers, as the city may have to protect the public health,
14 safety, and welfare, ensure the continued quality of telecommunications services, and safeguard
15 the rights of consumers who are residents of the city.

16 F. In accordance with Article 27-2, the city agrees that the submission by the
17 Company of this Ordinance shall constitute and be the equivalent of an application for franchise
18 as required by Article 27-2.4.

19 G. The city is authorized to grant one or more non-exclusive franchises for
20 telecommunications services within the city.

21 H. The city has reviewed Company's application and has determined that granting a
22 franchise in accordance with Article 27-2 is in the public interest and in the interest of the city
23 and its residents.

24 I. This franchise, as it relates to the city's costs, maintenance, management, and
25 necessary regulation of public rights-of-way, will assist in meeting the telecommunications

1 related needs and interests of the community.

2 **J.** In the event that State Legislation preempts the use of franchises for small
3 wireless facilities regulation and fee charges, the City may regard this agreement as one
4 permitting the use and occupancy of the Public Right of Way, subject to the terms of legislation.

5 **Section 2. Franchise Terms.** In exchange for Company's compliance with the
6 terms of this Ordinance, the provisions of Article 27-2, and other applicable city codes, there is
7 hereby granted by the city to Company permission to use public rights-of-way to provide
8 telecommunications services. All terms of Article 27-2 shall control Company's use of the public
9 rights-of-way except as specifically set out in this Ordinance.

10 **A. Short Title; Purpose; Applicability.**

11 (1) This Ordinance shall be cited as the "Broadband Network of New Mexico
12 Franchise Ordinance."

13 (2) The purpose of this Ordinance is to grant Company, the right, privilege, and
14 authority to:

15 (a) Furnish and distribute telecommunications services in the city, by means of its
16 network, on, over, under, along and across public rights-of-way, now or hereafter included in the
17 boundaries of the city as such boundaries now exist or may hereafter be extended; and

18 (b) Construct, purchase, acquire, locate, maintain, and extend into, within, and
19 through the city, a telecommunications network for the period and upon the terms and conditions
20 specified in this franchise comprised of all facilities and equipment used by Company to provide
21 telecommunications services, including but not limited to "Backhaul Equipment" and "Wireless
22 Communication Equipment."

23 This permission is not exclusive and does not prevent the city from issuing other
24 franchises or authorizations or prevent the city itself from constructing or operating its own
25 telecommunications network within the public rights-of-way, with or without a franchise.

1 (3) This franchise applies to the placement of telecommunications facilities in the
2 city's public rights-of-way.

3 **B. Definitions.**

4 *Bad Debt* means any portion of a debt that is related to a sale of telecommunications at
5 retail, for which gross charges are not otherwise deductible or excludable, that has become
6 worthless or uncollectible as determined under applicable federal income tax standards.

7 *Collocate* means to install, mount, maintain, modify, operate or replace one or more
8 wireless facilities on, in or adjacent to a wireless support structure or utility pole;

9 *Department* means the department of public works.

10 *Private Telecommunications Service* means a system, including the construction,
11 maintenance or operation thereof, for the provision of telecommunications service, or any portion
12 of that service, by a person for the sole and exclusive use of that person and not for resale,
13 directly or indirectly. For purposes of this definition, the person that may use such service
14 includes any affiliates of the person if at least eighty percent of the assets or voting stock of the
15 affiliates is owned by the person. If any other person uses the telecommunications service,
16 whether for hire or not, the private telecommunications service is a public telecommunications
17 service; NMSA 1978. § 63-9A-3 (L).

18 *Public Right of Way* has the meaning of § 3-1-2(M) NMSA 1978.

19 *Public Telecommunications Service* means the transmission of signs, signals, writings,
20 images, sounds, messages, data or other information of any nature by wire, radio, light waves or
21 other electromagnetic means originating and terminating in this state regardless of actual call
22 routing. Public Telecommunications Service does not include the provision of terminal equipment
23 used to originate or terminate such service; private telecommunications service; broadcast
24 transmissions by radio, television and satellite broadcast stations regulated by the federal
25 communications commission; radio common carrier services, including mobile telephone service

1 and radio paging; or one-way cable television service; NMSA 1978, § 63-9A-3 (M)

2 *Telecommunications Company* means a person that provides public telecommunications
3 service; NMSA 1978, § 63-9A-3 (N).

4 *Sale of Telecommunications at Retail* means the transmitting, supplying, or furnishing of
5 telecommunications and all services rendered in connection therewith for consideration, other
6 than between a parent corporation and its wholly owned subsidiaries or between wholly owned
7 subsidiaries, but only when the infrastructure maintenance franchise fee imposed by this chapter
8 previously has been paid to a retailer and the gross charge made by one such corporation to
9 another such corporation is not greater than the gross charge paid to the retailer for use or
10 consumption and not for resale.

11 *Service Address* means the location of telecommunications equipment from which
12 telecommunications services are originated or at which telecommunications services are received.
13 If this location is not a defined location, as in the case of wireless telecommunications, paging
14 systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the
15 location of the customer's primary use of the telecommunications equipment as defined by the
16 location in the City where bills are sent.

17 *Small Wireless Facility* means a wireless facility whose:

18 1. Antennas are, or could fit, inside an enclosure with a volume of six or fewer
19 cubic feet; and

20 2. Other ground- or pole-mounted wireless equipment, not including the following,
21 is twenty-eight or fewer cubic feet in volume:

- 22 (a) electric meter;
- 23 (b) concealment elements;
- 24 (c) telecommunications demarcation box;
- 25 (d) grounding equipment;

- 1 (e) power transfer switch;
2 (f) cutoff switch;
3 (g) vertical cable runs for the connection of power and other services; and
4 (h) elements required by the City in accordance with Subsection H of Section 3 of
5 the Wireless Consumer Advanced Infrastructure Investment Act.

6 *Wireless Facility:*

- 7 1. Means equipment at a fixed location that enables wireless communications
8 between user equipment and a communications network, including:
9 (a) equipment associated with wireless communications; and
10 (b) radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup
11 power supplies and comparable equipment, regardless of technological configuration;
12 2. Includes a small wireless facility; and
13 3. Does not include:
14 (a) the structure or improvements on, under or within which the equipment is
15 collocated;
16 (b) a wireline backhaul facility, coaxial cable or fiber-optic cable between wireless
17 support structures or utility poles; or
18 (c) coaxial or fiber-optic cable otherwise not immediately adjacent to, or directly
19 associated with, an antenna;

20 *Wireless Telecommunications* includes cellular mobile telephone services, personal
21 wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public
22 Law Number 104-104), as now or hereafter amended, including all commercial mobile radio
23 services and paging services.

24 **C. Small Wireless Facility Franchise Fee.**

- 25 1. Pursuant to the authority granted by section § 3-42-1 NMSA 1978 and 47 U.S.C.

1 253(c), there is hereby imposed an annual fee of two hundred and fifty dollars (\$250) multiplied
2 by the number of small wireless facilities placed by the wireless provider in the right of way and
3 in the City limits.

4 2. On an annual basis, the rate for the use of the Public Right of Way shall increase
5 by an amount equal to one-half the annual change, if any, in the most recent consumer price index
6 for all urban consumers for New Mexico, as published by the United States department of labor.
7 The City shall notify the Company of the prospective adjustment and shall make the adjustment
8 effective sixty days following that notice.

9 **D. Filing Returns and Payment of Franchise Fee.**

10 1. On or before the last day of each calendar month, the Company is required to
11 pay the infrastructure maintenance franchise fee imposed by this chapter and shall file with the
12 City a remittance return and shall pay the fee attributable to the fee for the preceding calendar
13 month. The return shall contain such information as the director may reasonably require.

14 2. No later than February 28th of each year beginning in 2019, the Company
15 shall provide to the City a report attesting to the amount of the small wireless facility
16 franchise fees paid to the department for the preceding calendar year, and that such
17 amount complies with the requirements of this chapter.

18 **E. Company's Right to Enter into Sublicense Agreements.**

19 The parties agree and acknowledge that, notwithstanding anything in this Ordinance to
20 the contrary, certain Equipment put in place by Company pursuant to this Ordinance may be
21 owned and/or operated by Company's third-party wireless carrier customers ("Carriers") and
22 installed and maintained by Company pursuant to license agreements between Company and
23 Carriers. Such Equipment shall be treated as Company's Equipment for all purposes under this
24 Ordinance and each Equipment Lease provided that (i) Company remains responsible and liable
25 for all performance obligations under this Ordinance and each Equipment Lease with respect to

1 such Equipment; (ii) city's sole point of contact regarding such Equipment shall be Company;
2 and (iii) Company shall have the right to remove and relocate the Equipment.

3 **F. Registration of Providers, Resellers and Sublicensees.**

4 1. Within ninety (90) days after the effective date of the ordinance authorizing a
5 franchise with the Company, the Company shall provide the name and address of every
6 telecommunications reseller, sublicensee or other telecommunications company with whom the
7 Company has a contractual relationship to provide telecommunications services or to make
8 available telecommunications facilities in the public way. The Company shall have a continuing
9 duty to file with the City, within 45 days after the date of occurrence of any changes in the
10 information provided to the City, including the creation or termination of a contractual
11 relationship described herein.

12 2. *Resales.*

13 Whenever amounts are claimed to be excluded from gross charges as sales for resale, the
14 reseller shall furnish to the Company the reseller's resale information. The Company shall retain
15 the resale information with its books and records.

16 **G. Maintaining Books and Records.**

17 The Company shall keep accurate books and records of its business or activity, including
18 original source documents and books of entry denoting the transactions that gave rise, or may
19 have given rise, to any liability or exemption. All such books and records shall, at all times during
20 business hours of the day, be subject to and available for inspection by the department.

21 **H. Insurance Requirements.**

22 Company shall comply with the provisions of Section 27-2.9 SFCC 1987, and Company
23 shall obtain and maintain in full force and effect throughout the term of this franchise the
24 following types of insurance:

25 (1) Commercial comprehensive general liability insurance;

1 (2) Workers' Compensation insurance as required by law; and

2 (3) Commercial automobile liability insurance providing a minimum coverage in the
3 amount required under the New Mexico Tort Claims Act.

4 **I. Term of Franchise.** The term of this franchise, and the rights, privileges, and
5 authority granted hereunder shall continue for a period of ten (10) years from the effective date
6 hereof. The term of this franchise shall automatically be renewed annually unless Company
7 provides notice to City of its intent not to renew at least thirty (30) days prior to expiration of the
8 then current term. Company may surrender permits at any time and remove its
9 telecommunications facilities at any particular location upon thirty (30) days' prior written notice
10 to City. Company shall not be obligated to pay the franchise fee for such location following
11 removal of its telecommunications facilities.

12 **J. Indemnity.** Company and City agree to defend, indemnify, and hold harmless
13 each other and its officials, agents, volunteers, and employees from and against any and all
14 claims, actions, suits, or proceedings of any kind brought against said parties because of any
15 injury or damage received or sustained by any person, persons, or property arising out of or
16 resulting from the activities of the indemnifying party pursuant to this franchise, except to the
17 extent caused by the negligence or willful misconduct of the indemnitee or by reason of any
18 asserted act or omission, neglect, or misconduct of the indemnitee, or its agents or employees, or
19 any subcontractor or its agents or employees. The indemnity required hereunder shall not be
20 limited by reason of the specification of any particular insurance coverage. Neither party shall be
21 liable to the other for consequential, indirect or punitive damages (including lost revenues, loss of
22 service, or loss of data) for any cause of action, whether in contract, tort or otherwise, even if the
23 party was or should have been aware of the possibility of these damages, whether under theory of
24 contract, tort (including negligence), strict liability or otherwise. The maximum liability of either
25 party to the other hereunder shall be the amount paid or payable during the preceding twelve (12)

1 months.

2 **K. Violations and Penalties.** Only if the parties have agreed in writing it is
3 applicable, and if the Company fails to pay the infrastructure maintenance franchise fee, as
4 provided by this Chapter, the Company shall be subject to a fine of not less than \$100 for each
5 day that the failure to pay continues. Each day that the Company fails to pay shall constitute a
6 separate and distinct violation under this Chapter. Any retailer that becomes subject to this fine
7 may be enjoined from doing business in the City until the Company has paid all sums due under
8 this Chapter.

9 Any telecommunications company who otherwise violates this chapter shall be subject to
10 a fine of not less than \$100 for each offense. Each day the violation continues shall constitute a
11 separate offense.

12 **L. Dispute Resolution Provision.**

13 1. In the event of any other dispute arising from or relating to the franchise or
14 breach thereof, and if the dispute cannot be settled through negotiations, the following process
15 will be followed during which any of the above remedies and penalties may be imposed.

16 2. All disputes will be mediated prior to litigation. The costs of such mediation will
17 be equally split. The place of the mediation session shall be in Santa Fe, New Mexico. The city
18 and the Company will select a mediator or mediators by mutual agreement and, in cooperation
19 with the mediator(s), shall determine all necessary rules and procedures for the mediation. The
20 city and the Company will fully cooperate in the mediation activities. All mediation
21 communications shall be confidential, not subject to disclosure and shall not be used as evidence
22 in any arbitration, judicial, or administrative proceeding, as set forth in the Mediation Procedures
23 Act, NMSA 1978, §§ 44-7b-1 through 44-7b-6.

24 **M. Unauthorized Use of Public Rights-Of-Way Unlawful.** In accordance with
25 Section 27-2.12 SFCC 1987, Company shall not:

1 (1) Use public rights-of-way to provide telecommunications services that have not
2 been authorized by the city.

3 (2) Place facilities on public structures or utility infrastructure to provide
4 telecommunications services which are not allowed under the terms of this franchise.

5 Each unauthorized use shall be deemed to be a distinct and separate offense. The
6 provisions of this paragraph do not apply to any dispute between the city and Company under this
7 franchise where the city alleges that Company has failed to comply with the terms of this
8 franchise.

9 **N. Land Use Review.** After approval of this franchise by the governing body, if
10 Company proposes to construct additional telecommunications facilities in the city's public
11 rights-of-way, Company shall comply with the provisions of Section 27-2.19 SFCC 1987 to the
12 extent the functionality of any particular telecommunications facility is not impaired, which shall
13 include, without limitation:

14 (1) Application and Fees.

15 This section applies to the activities of the Company in installing a new, replacement or
16 modified utility pole associated with the collocation of a small wireless facility in a right of way.

17 a) The City shall process an application for a permit to install a new, replacement or
18 modified utility pole associated with the collocation of a small wireless facility within one
19 hundred fifty days after receiving the application. If the City fails to approve or deny the
20 application within that period, the authority shall deem the application approved. The application
21 fee for the installation, modification and, replacement of a utility pole shall be (\$750).

22 b) This section applies to a wireless provider's *collocation* activities within a right
23 of way.

24 The Company shall pay an application fee in the amount of one hundred dollars (\$100)
25 for each of up to five small wireless facilities and fifty dollars (\$50.00) for each additional small

1 wireless facility whose collocation is requested in a single application.

2 (2) *Additional Permits.* In addition to the permits required set forth elsewhere in
3 Article 27-2 and city code, the following permits are required from the city:

4 (a) Street cut permits pursuant to Article 23-2 SFCC 1987;

5 (b) Secondary electrical permits at each antenna or other facility site requiring
6 secondary electrical service; and

7 (c) Other permits as may be required.

8 **O. Compliance with Law.**

9 (1) Company shall comply with the terms and conditions of Article 27-2 SFCC 1987
10 except as set forth herein, all other applicable city ordinances, and federal and state laws.

11 (2) Company is explicitly subject to the police powers of the city, all other applicable
12 governmental powers, and the city's rights under state and federal laws.

13 **P. Severability.** The requirements and provisions of this Ordinance and its
14 sections, parts, subparts, paragraphs, and clauses are severable. In the event that any requirement,
15 provision, section, part, subpart, paragraph, or clause of this Ordinance, or the application thereof
16 to any person or circumstance, is held by a court of competent jurisdiction to be invalid or
17 unenforceable, it is the intent of the governing body that the remainder of the Ordinance be
18 enforced to the maximum extent possible consistent with the purposes of this Ordinance.

19 **Q. Effective Date; Publication.** As provided by NMSA 1978, Section 3-42-1, this
20 Ordinance shall not become effective until at least thirty (30) days after its adoption, during
21 which time this Ordinance shall be twice published in full, not less than seven days apart. As
22 required by law, Company shall pay the publication cost.

23 **R. Acceptance.** Company, within thirty (30) days of the date of adoption of this
24 Ordinance, shall file with the city clerk an unconditional acceptance of this Ordinance, on a form
25 prescribed by the city. Within ten (10) days after the filing of the acceptance, the city clerk shall

1 acknowledge in writing the receipt of Company's acceptance. If Company does not file said
2 acceptance this Ordinance shall not be or become effective.

3 **S. Notice.** For the purpose of this Ordinance:

4 (1) Notice to the city shall be to:

5 City Manager

6 City of Santa Fe

7 Post Office Box 909

8 Santa Fe, New Mexico 87504-0909

9 With a copy to:

10 City Attorney

11 City of Santa Fe

12 Post Office Box 909

13 Santa Fe, New Mexico 87504-0909

14 (2) Notice to Company will be to:

15 Attn.: Legal Department

16 Broadband Network of New Mexico, LLC

17 660 Newport Center Drive, Suite 200

18 Newport Beach, CA 92660

19 With a copy to:

20 Attn: Asset Management

21 Broadband Network of New Mexico, LLC

22 660 Newport Center Drive, Suite 200

23 Newport Beach, CA 92660

24 (3) Notice shall be effective upon delivery at the above addresses until the city or

25 Company notifies the other in writing, of a change in address. All notices shall be delivered

1 personally or sent by certified mail, return receipt requested to the parties at their respective
2 addresses set forth above.

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4 APPROVED AS TO FORM:

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KELLEY BRENNAN, CITY ATTORNEY

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25 *M/Legislation/Bills 2018/Telecom Franchise Broadband Network NM*

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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2018-__

INTRODUCED BY:

Councilor Peter N. Ives

A RESOLUTION

AUTHORIZING THE SALE AND CONSUMPTION OF BEER DURING THE PARTY ON THE PITCH SOCCER TOURNAMENT ON JUNE 2-3, 2018, PURSUANT TO SECTION 23-6.2(B) SFCC 1987.

WHEREAS, the Governing Body adopted Ordinance #2017-3 on March 8, 2017 that created a new process for approving the sale and consumption of alcohol on city property; and

Whereas, the MRC is part of the larger parks that includes Marty Sanchez which sells alcohol at many events.

WHEREAS, for locations not specifically mentioned in Section 23-6.2(A) SFCC 1987, the approval by the Governing Body of a resolution that specifies the event, date hours, location, number of expected attendees, type of alcohol to be served, and required permits is required 60 days prior to the event; and

WHEREAS, the Santa Fe Adult Soccer League held a Party on the Pitch soccer tournament in 2016 at the Downs and in 2017 at the Bernalillo Soccer Complex; and

WHEREAS, the League desires to hold this year’s tournament at the City’s Municipal

1 Recreation Complex (MRC) where the fields have recently been redone, making them suitable to
2 hold such a tournament; and

3 **WHEREAS**, the soccer fields are part of the larger Municipal Recreation Complex
4 which includes Marty Sanchez Golf Course at which alcohol is regularly served; and

5 **WHEREAS**, at each of the last two Party on the Pitch Tournaments, the Santa Fe Adult
6 Soccer League has partnered with Santa Fe Brewing Company to provide a beer garden for
7 players and fans to enjoy during and after games held over the two days; and

8 **WHEREAS**, alcohol service provided by Santa Fe Brewing Company for this event
9 would adhere to all regulations required in Section 23-6.3 SFCC 1987; and

10 **WHEREAS**, the Party on the Pitch Tournament hopes to attract increasing numbers of
11 out-of-city and out-of-state teams to participate to show the demand for high quality soccer fields
12 in the area and spur the eventual development of the Santa Fe Soccer Complex.

13 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
14 **CITY OF SANTA FE** that alcohol service during the Party on the Pitch soccer tournament is
15 hereby approved.

16 Event: Party on the Pitch Soccer Tournament

17 Date: June 2-3, 2018

18 Hours: 10:00am to 5:00pm on Saturday, June 2 and 12:00noon to 5:00pm on Sunday,
19 June 3, 2018.

20 Location: Municipal Recreation Center soccer fields

21 Number of expected attendees: 290 players

22 Type of alcohol to be served: Beer

23 Required permits: Special dispenser permit

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

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ALAN M. WEBBER, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

Ongoing Salvador Perez Pool Problems

I think the mandate is to change city hall culture so that the government is transparent and responsible to its citizens. I hope the mayor and council will give some attention to Salvador Perez pool. It has been misoperated for several years. Every winter for six months we hear lame excuses about why the HVAC isn't operating properly. The past three weeks have been incredibly cold since the staff turned off the humidifier. Seniors have left the pool early or have turned around and not used the facility when they hear or experience the pool air and water temp...Friday the staff was working on the HVAC for the second day that week...Even though the staff did not test for chloromine gas, the lifeguard decided even before the HVAC shut off to open doors to the outside (it was 45 degrees) and turn on all the fans including the biggest one that he directed across the pool. Several people were forced to leave immediately and others were prevented from using 1/3 of the pool. Eventually Liz Roybal showed up and said she "had had it up to there with the facilities staff not fixing the HVAC so she was going to shut the pool down for the rest of the day..." City staff continues to get paid.>The only people Liz Roybal "punished" that day were the patrons...

The chloromine scare tactic (really dangerous gas) would be believable if the staff actually showed they cared....Chloromine gas needs low ceilings, warm air (it is a 30 40 ft high ceiling; not warm in the pool area). It needs body oils and urine mixing with the chlorine to make chlormines...The staff does not enforce the state's health law that you must shower before you enter the pool... The same lifeguard who insisted on immediately opening the doors on Friday is the guard who let a woman get in the pool for a month without ever informing her of the state health rule or enforcing it...(She gets undressed in the pool area and then immediately walks over and gets in the pool). He said she could shower before she got there and that if she had a suit on she obviously had showered before she got there....Many of us wear bathing suits to the pool--virtually none of us have showered before we got to the pool....

The pool has not been fixed as Roybal asserted Friday. It seems that the city has totally given up on fixing this system at all.

Again seniors and disabled are being denied access to this pool. New mayor and city council please stop diverting the funds designed for Salvador Perez to Ft Marcy and Chavez... Make this mid town pool accessible to your constituents who are trying hard to stay healthy!

Stefanie Beninato

Stefanie Beninato as disabled senior and on behalf of other seniors disabled and not

PO Box 1601

Santa Fe, NM 87504

505 988 8022

Petitions from the
Floor

Hi, my name is Shelley Robinson, I'm here tonight to speak on behalf of the city's Bicycle and Trails Advisory Committee.... It's easier to say, "BTAC".

We welcome you, Mayor Webber and our new city councilors, Councilor Romero-Wirth, Councilor Vigil-Coppler and Councilor Abeyta and look forward to sharing ideas with you on bicycle and pedestrian improvements and sharing the road safety issues throughout our city.

One of you lucky councilors will be joining us soon as chairperson of BTAC and we promise to keep it interesting and fun. We look forward to meeting you and having your leadership in the years ahead.

I would like to give you a brief background on BTAC,... where we've been and where we need to go. In 2003, a group of committed citizens and bike riders formed the committee with the guidance of Councilor Bushee. The resolution reads that, "the committee shall advise on policies, projects, ordinances and funding as they relate to cycling and pedestrians as safe alternative means of transportation on roads and trails." And "to pursue designation of the city of Santa Fe as a bicycle friendly city."

I am the last straggler from the early days of BTAC, I've been a member since 2005 so I want to give a shout out to the committee, to hundreds of volunteers, to Councilors Bushee and Maestas, to city staff and to elected officials for "walking the talk"....getting things done by spending time and money to modernize and improve our bicycle and pedestrian infrastructure throughout the city. We should be proud of our accomplishments over the past 15 years....which include:

~ Miles of scenic paved urban trails that follow the Santa Fe river, the Acequia Madre and the Railroad with connections to neighborhoods, schools and parks extending throughout all 4 city districts.

~ We wrote and adopted a comprehensive 2012 Bicycle Master Plan with the Metropolitan Planning Organization.... which is about to be updated because many of the priority 1, phase A projects are now complete or under construction.

~ We have a brand new Pedestrian Master Plan, created by the MPO along with a diverse working group of local community members.

~ We have the 2 impressive underpasses under busy St. Frances Drive making key connections of north and south trail alignments.

~ We have built some of the best and most challenging mountain bike trails in the country, the Dale Ball Trails and La Tierra Trails and have been recognized internationally as a destination for outdoor recreation because of these. This room is filled with bicycle advocacy groups and non-profits that provide bicycle education and community support to cyclists, and volunteer opportunities and stewardship for our trails.

~ And The League of American Bicyclists has awarded Santa Fe, a silver level recognition as a bicycle friendly city. Santa Fe should be proud!

We've encouraged more people to leave their cars at home, get on a bike or walk, get healthy, be environmentally friendly, commute by bike, bike to school, enjoy our 300 days of sunshine a year. It's always good to see more cyclists on our roads.

However, we have a critical challenge ahead of us. In the last 3 months, very tragically we've experienced far too many bike/car accidents and pedestrian/car accidents. This safety issue requires our attention now more than ever. We need your support and BTAC will continue to work hard with you to keep this concern a top priority and together we can develop a creative strategy.

I know that each one of you is hitting the ground running with this new administration and this month is especially busy but I'd like to encourage you all to join us at our March 21st BTAC meeting next Wednesday at 5:30, here in council chambers. It would be an honor to introduce ourselves and answer any questions you bring to us. Again, we look forward to working with all of you.

Thank you for your time this evening.

Statement to Santa Fe City Council March 14 2018

Dr. Carl W Gable
505-670-7265
cwgable@post.harvard.edu

Hello, my name is Carl Gable. Thank you for the opportunity to speak.

I have been a Santa Fe resident for over 30 years. During an average week I spend 8-12 hours on my bike. My interests in speaking to you tonight are that I am concerned about the safety of pedestrians and bicycle riders using the roads and paths in and around Santa Fe and the way the laws are enforced when a bike/car incident occurs.

I have two basic messages:

- 1) We have a problem regarding the safety of bike riders, and
- 2) We have advocacy groups in Santa Fe that are prepared to help the City Council formulate and execute solutions.

You have the opportunity to make a huge positive difference for the city of Santa Fe and Santa Fe residents. Please make it a priority to make Santa Fe a more bike friendly community. It is the decision you make and the resources you allocate in the next 2-4 years that can turn Santa Fe from a place where many bicycle riders fear for their lives every time they take their bike onto a road to a community know for its bike friendly infrastructure and attitude.

Through the work of city staff and BTAC, the Bicycle Trails Advisory Committee, Santa Fe has been designated a Silver Level Bike Friendly City by the League of American Bicyclists. This is a great accomplishment! But actions speak louder than words and in the view of some residents, Santa Fe has slid backwards.

Why am I concerned? You may or may not be aware of the numerous bicycle/car crashes, and pedestrians injured and killed in the very recent past.

To convince you we have a problem, I'll quickly summarize a few recent incidents and statistics:

- Two weeks ago on CR41 in Santa Fe County an organized ride of 15 of the Santa Fe Seniors on Bikes were approached from behind by a driver who aggressively passed then stopped on the road and as the group approached, put his car in reverse, hitting the riders in the front of the group. Three people were seriously injured. One person is still in hospital with multiple fractured ribs, broken pelvis and collapsed lung. Charges are pending. The driver was not arrested at the scene and now, nearly 2 weeks later, has not been charged.
- In November, my friend Irena O. was nearly killed when a car made a left turn in front of her as she rode on Alameda near Siler Rd. She hit the side of the vehicle going 35 miles per hour. Irena is a Santa Fe native but last year she spent the summer as a professional bike racer in Europe racing and winning at the highest level of cycling. As a result of the crash she received a broken collarbone, both thumbs were broken, one hand, the orbital around her eye, both lungs collapsed, many of her teeth were broken and she received traumatic brain injury. She is now in constant rehab and therapy trying to get her life back. The driver got a \$156 fine and 90 days unsupervised probation.

- In December, my friend Gary was riding to work on Baca St, a narrow marked Santa Fe bike route, when a careless driver who neglected to scrape the frost from her window hit him from behind and dragged him 80'. The driver was cited for careless driving. The case is pending.
- In December, my friend Hillary was hit riding home from work on Hwy 14. A driver made a left turn in front of her and she struck the side of the car. She suffered a broken pelvis, multiple abrasions and the loss of her bike. She went to the hospital and was told the officer would interview her after she was treated. In the end the driver was cited for careless driving and failure to yield at intersection. The driver said that the reason she didn't see Hillary was that she was looking at the backseat while executing the turn. The police never interviewed Hillary. When she finally obtained a copy of the report, many of the details in the report were erroneous and did not accurately represent the sequence of events.
- In late February, two pedestrians were hit, one was killed in separate incidents on Paseo de Peralta and Cerrillos.

This is only a partial list of incidents in the last 6 months!

To put this in perspective beyond the antidotal information I just shared, federal statistics show that, of the fifty states, New Mexico has the third highest average annual cyclists deaths per million people, at 3.1 deaths per million people. In a typical year, 6-8 cyclists are killed in New Mexico and in the majority of the cases, the cyclist is not at fault. However, the law of gross tonnage prevails when a car and cyclists collide, the cyclist loses.

I hope I have convinced you that we have a problem. My request is that you, as a body that can make decisions and allocate resources, to treat this as an opportunity. We are doing poorly. There is low hanging fruit and your actions can improve the situation. I'm not going to try to provide overly simplistic answer now. Instead I appeal to you to use the resources at your disposal to formulate and execute plans that will make Santa Fe a safe place for cyclists and pedestrians, young and old.

My request to you is:

- Make bicycle and pedestrian safety improvement a goal of this administration.
- Utilize BTAC, the Bicycle and Trails Advisory Committee, as a resources for expert advice on how to improve safety.
- Utilize other interested bicycle advocacy groups such as Bike Santa Fe, League of American Bicyclists, Bicycle Coalition of New Mexico and the Santa Fe Fat Tire Society.
- Distracted driving is bad for everyone. It is especially bad for bicycles sharing the road. Address this problem. Don't tolerate the rampant cell phone usage and texting while driving.
- Look into the uniformity and consistency of the investigation and charges of bike/car and pedestrian/car incidents. Is a slap on the wrist all a driver who causes life-changing injuries should get?

You have an opportunity. Santa Fe offers tremendous resources for bicyclists and pedestrians. We have some wonderful bike trails and infrastructure and more are being built all the time. That is awesome! In the spring, over 2,200 people from all over New Mexico and surrounding states come to Santa Fe to ride the Santa Fe Century 100 mile ride. People love to visit Santa Fe. Santa Fe can grow as a road and mountain biking mecca. However, for this to truly materialize the residents and visitors need to feel safe. Please take steps to make Santa Fe safer.

The potential payoff is huge. You might be saving my life or the life of one of my friends.

Thank you.

Petitions from the Floor

Cycling and pedestrian safety recommendations and observations

- HAWK signals on the rail trail work and should be used in other parts of the city

Corridors / crossings that need improvement

- West Alameda between St. Francis and Camino Alire (HAWK)
- Avenida Cristobal Colon and Agua Fria (HAWK and crosswalk paint etc.)
- Agua Fria in general
- Alta Vista and St. Francis (HAWK, crosswalk paint)
- Galisteo and St. Michael's (HAWK, crosswalk paint)
- Boca St. and Cerrillos (HAWK, crosswalk paint etc.)
- West Alameda from St. Francis to Atalaya Elementary (painted bike lanes / bike symbol)
- Paint isn't a perfect solution, but at least it helps with visibility and driver awareness
- Cyclists and pedestrians are particularly at risk from drivers turning into crosswalks despite walk signals.
- Cyclists often have to use crosswalks at crossings, which in my opinion, makes them more vulnerable
- Focus efforts at crossings that connect bike paths, transit, and popular corridors

Matt Piccarello

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Council on March 14, 2018

Exhibit 12

**CITY COUNCIL MEETING OF
March 14, 2018
BILLS AND RESOLUTIONS SCHEDULED FOR INTRODUCTION
BY MEMBERS OF THE GOVERNING BODY**

Mayor Alan M. Webber		
Co-Sponsors	Title	Tentative Committee Schedule
Councilor Roman Abeyta		
Co-Sponsors	Title	Tentative Committee Schedule
Councilor Mike Harris		
Co-Sponsors	Title	Tentative Committee Schedule
	<p align="center">AN ORDINANCE</p> <p>GRANTING BROADBAND NETWORK OF NEW MEXICO, LLC A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.</p>	<p>Public Works Committee – 3/26/18 Economic Development Advisory Committee - 4/11/18 City Council (request to publish) – 4/11/18 Finance Committee – 4/16/18 City Council (public hearing) – 5/9/18</p>
	<p align="center">AN ORDINANCE</p> <p>GRANTING COMPUTER NETWORK SERVICE PROFESSIONALS, INCORPORATED DBA NMSURF A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.</p>	<p>Public Works Committee – 3/26/18 Economic Development Advisory Committee - 4/11/18 City Council (request to publish) – 4/11/18 Finance Committee – 4/16/18 City Council (public hearing) – 5/9/18</p>
	<p align="center">AN ORDINANCE</p> <p>GRANTING CONTERRA ULTRA BROADBAND, LLC A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.</p>	<p>Public Works Committee – 3/26/18 Economic Development Advisory Committee - 4/11/18 City Council (request to publish) – 4/11/18 Finance Committee – 4/16/18</p>

		City Council (public hearing) – 5/9/18
	AN ORDINANCE GRANTING CYBER MESA COMPUTER SYSTEMS, INCORPORATED A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.	Public Works Committee – 3/26/18 Economic Development Advisory Committee - 4/11/18 City Council (request to publish) – 4/11/18 Finance Committee – 4/16/18 City Council (public hearing) – 5/9/18
	AN ORDINANCE GRANTING PLATEAU TELECOMMUNICATIONS, INCORPORATED A NON-EXCLUSIVE FRANCHISE TO OPERATE A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF SANTA FE; THE RIGHT TO USE CITY PUBLIC RIGHTS-OF-WAY TO PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY; AND FIXING THE TERMS AND CONDITIONS THEREOF.	Public Works Committee – 3/26/18 Economic Development Advisory Committee - 4/11/18 City Council (request to publish) – 4/11/18 Finance Committee – 4/16/18 City Council (public hearing) – 5/9/18
Councilor Peter Ives		
Co-Sponsors	Title	Tentative Committee Schedule
	A RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF BEER DURING THE PARTY ON THE PITCH SOCCER TOURNAMENT ON JUNE 2-3, 2018, PURSUANT TO SECTION 23-6.2(B) SFCC 1987.	Finance Committee - 3/19/18 Parks and Recreation Advisory Committee - 3/20/18 City Council - 3/28/18
Councilor Signe Lindell		
Co-Sponsors	Title	Tentative Committee Schedule
Councilor Chris Rivera		
Co-Sponsors	Title	Tentative Committee Schedule
Councilor Carol Romero-Wirth		
Co-Sponsors	Title	Tentative Committee Schedule
Councilor Renee Villarreal		
Co-Sponsors	Title	Tentative Committee Schedule

Councilor JoAnne Vigil-Coppler		
Co-Sponsors	Title	Tentative Committee Schedule

Introduced legislation will be posted on the City Attorney's website, under legislative services. If you would like to review the legislation prior to that time or you would like to be a co-sponsor, please contact Jesse Guillen, (505) 955-6518, jbg Guillen@santafenm.gov or Linda Vigil at (505) 955-6501, lfvigil@santafenm.gov.