

TAX VERIFICATION

PROPERTY TAX:

The City of Yerington requires the following property tax statement to be filled out by the Lyon County Clerk's Office before issuing any permit:

Property Tax Statement: a signature is required from the County Clerk's office showing taxes are paid current on subject property.

I, Lisa Glass, hereby

certify that all required property taxes are currently paid on Assessor's Parcel

Number(s):

- 014-441-24
- _____
- _____
- _____
- _____
- _____

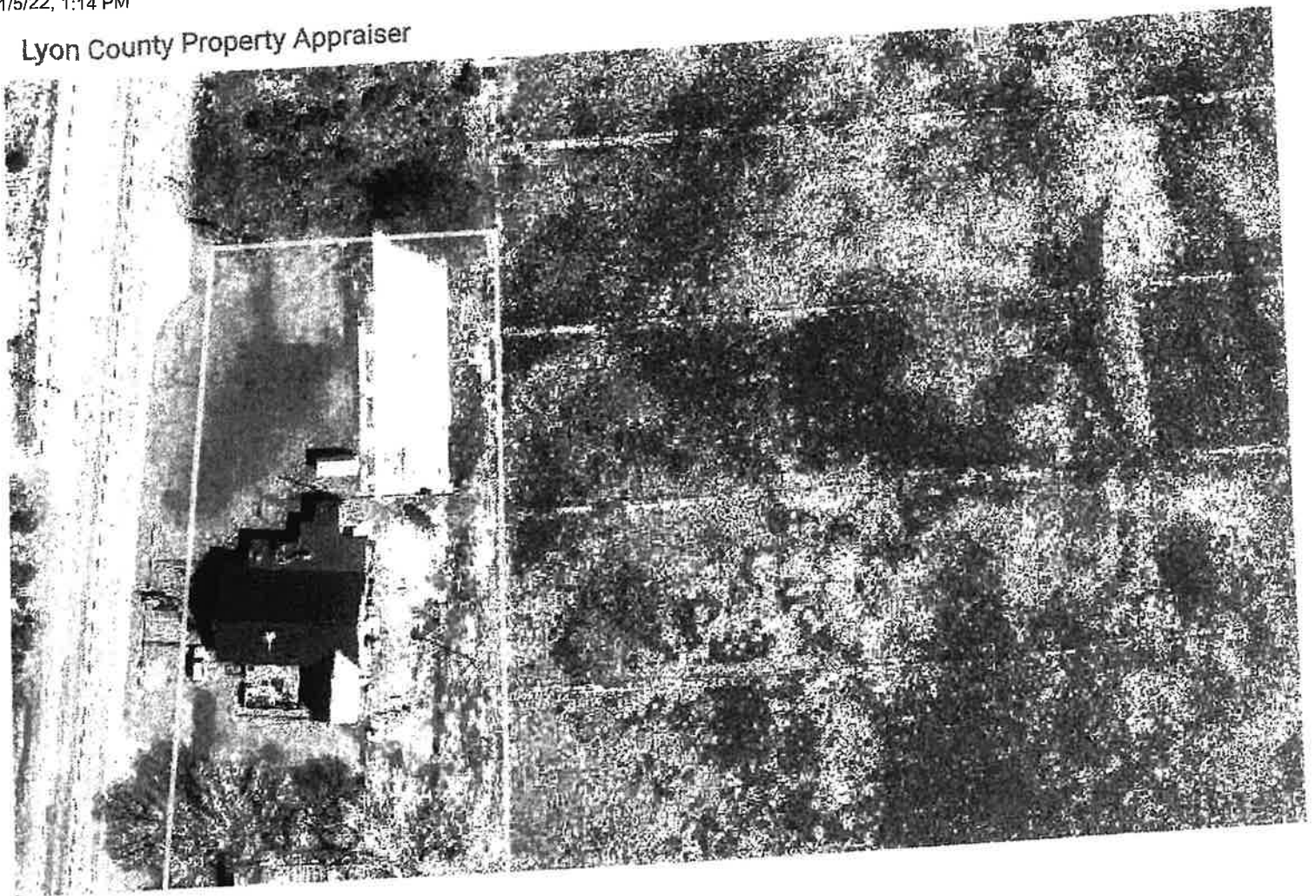
Dated this 7 day of January, 2022.



Lyon County Clerk

Deputy City Clerk

Lyon County Property Appraiser



014-441-24

/parcel/01444124

36 HWY 339
MASON VALLEY, NV

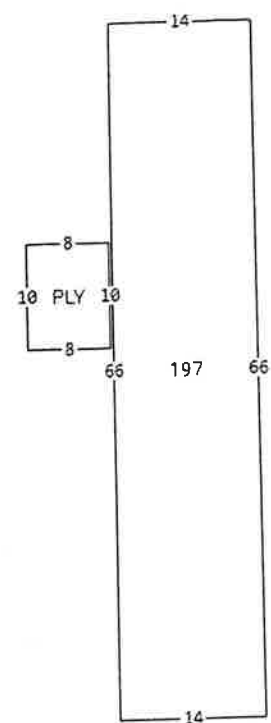
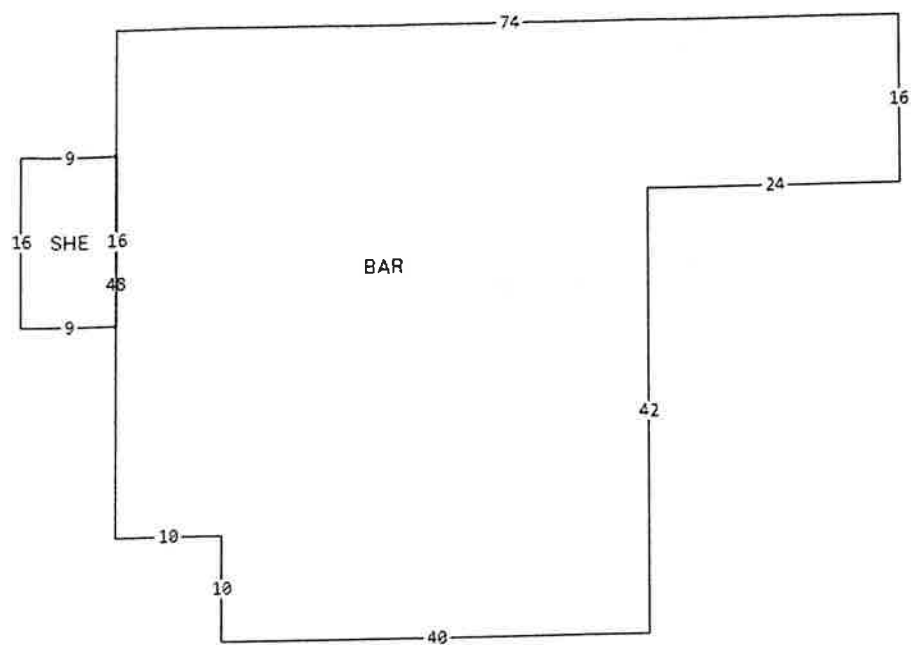
Owners
CABIN FEVER ENTERTAINMENT LLC

Legal Description
16-13-25 FRSE4NE4

Mailing Address
36 HWY 339
YERINGTON, NV 89447-0000

DOR Code: 400 - General Commercial
Neighborhood Code: NONE - NONE

Back to Parcel



ADJACENT PROPERTY OWNERS

SNYDER LIVESTOCK CO.

P.O. BOX 550
YERINGTON, NV 89447

PATRICIA LYNN BLAKE

56 HWY 339
YERINGTON NV 89447

CABIN FEVER ENTERTAINMENT LLC

36 HWY 339
YERINGTON NV 89447

MCCLEOD DEVELOPMENT INC

P.O. BOX 767
YERINGTON, NV 89447

WALLACE J. AND LINDA P. LEE

904 W. GOLDFIELD
YERINGTON, NV 89447

DARROL BROWN

P.O. BOX 834
YERINGTON, NV 89447

VERNON MILLER

12 ST RTE 339
YERINGTON, NV 89447

FRANCIS AND LEONA HANSON

924 DOLCE DRIVE
SPARKS, NV 89434

PLEASANT SPRING PROPERTIES LLC

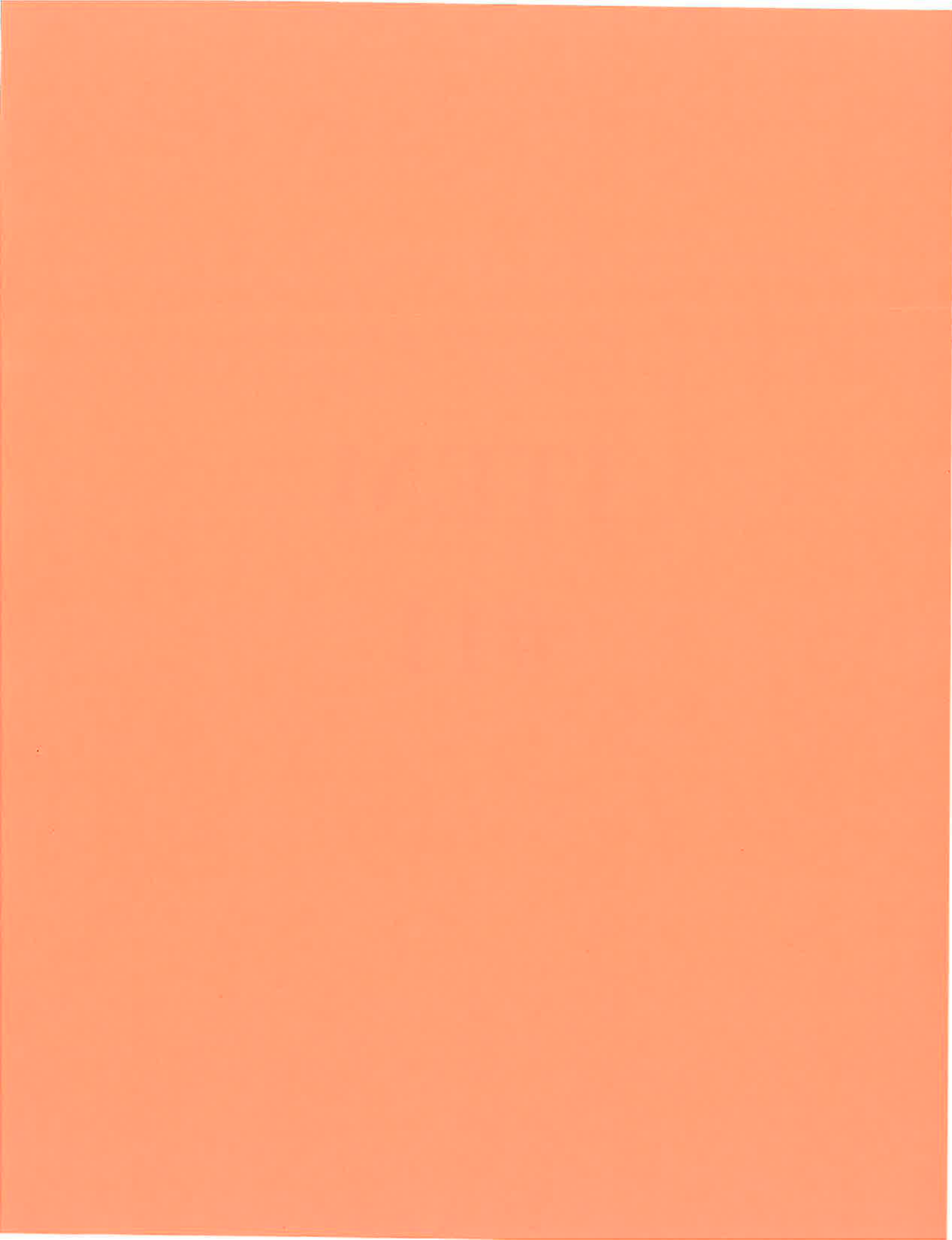
3527 MT DIABLO BLVD #301
LAFAYETTE, CA 94549

ROBERT FABRI

5705 TAPPAN DR
RENO, NV 89523

ITEM

#11





RECEIVED
JAN 05 2022

BY: SL

CHANGE OF LAND USE APPLICATION (ZONE CHANGE)
CITY OF YERINGTON
102 S. MAIN STREET
YERINGTON, NV 89447 (775) 463-2729

Owner: Whispering River Ranch LLC ^{20 Park} Applicant: Same
Address: 102 South Center Address: _____
City/State/Zip: Yerington NV 89447 City/State/Zip: _____
Telephone: (775) 722-6893 Telephone: _____

LEGAL DESCRIPTION OF PROPERTY

Assessor's Parcel Number(s): 014-441-24
If within a Subdivision, Name: N/A Lot: _____ Block: _____
Square Feet of Property: _____ Deed Restriction: Yes _____ No ☒
(If Yes, Copy attached)
Street Address of Property: 36 Hwy 339

REQUIRED ITEMS FOR APPLICATION

1. Plot Plan: Drawn to scale showing property size, locations of existing buildings and proposed buildings, abutting streets and alleys, driveways and property ownerships within 300 feet of the exterior boundaries of the subject property.
2. List Containing Names and Addresses of Property Owners within 300 Feet: List must contain the names and addresses of owners of property within 300 feet of the exterior limits of the subject property. (City staff will procure this list.)
3. Property Tax Verification: Showing taxes are paid current on subject property.
4. Application Fee: The fee shall be \$300.00 per application; Non-refundable.

OWNER'S CERTIFICATE

As provided in the Yerington City Code, Title 10, Chapter 11, undersigned Applicant/Owner of the above legally described property now classed in Zone Light County Code 400-2, requests consideration to change to Zone C2, as per the plot plan attached hereto and made a part of hereof. Said property was acquired by Applicant on 12/30/21.

I, Jeff J Rife, Owner in fee of the described property, state that this Application for a Change of Land has been made with my full knowledge and consent and the facts stated above are true to the best of my knowledge.

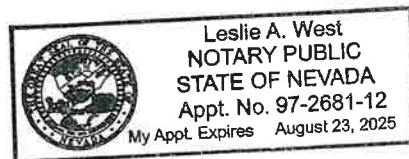
[Signature]
Signature of Owner

State of NV
County of Lyon

On the 5 day of Jan, 2022 personally appeared before me
[Signature] Leslie A. West, a Notary Public,
Jeff J. Rife who acknowledged that he executed the

above instrument.

[Signature]
Notary Public



APPLICANT'S CERTIFICATE

All the facts as stated herein are correct to the best of my knowledge and belief.

Signature of Applicant

State of _____
County of _____

On the _____ day of _____, 20__ personally appeared before me
_____, a Notary Public,
_____ who acknowledged that they executed the
above instrument.

Notary Public

The City of Yerington is an equal opportunity provider

PLOT PLAN DRAWN TO SCALE: Another map may be submitted for the plot plan, i.e. Assessor's Plat Map, but must be approved at the submittal of the application. Indicate northerly direction on map.

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- _____
- _____
- _____
- _____
- _____

Dated this 7 day of January, 20 22.

Lisa Glass

Lyon County Clerk

Deputy City Clerk

Lyon County Property Appraiser



014-441-24

/parcel/01444124

36 HWY 339
MASON VALLEY, NV

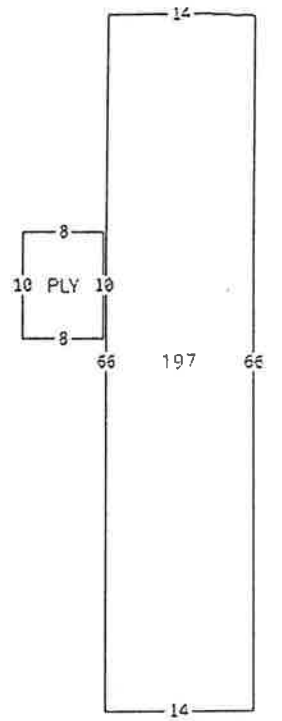
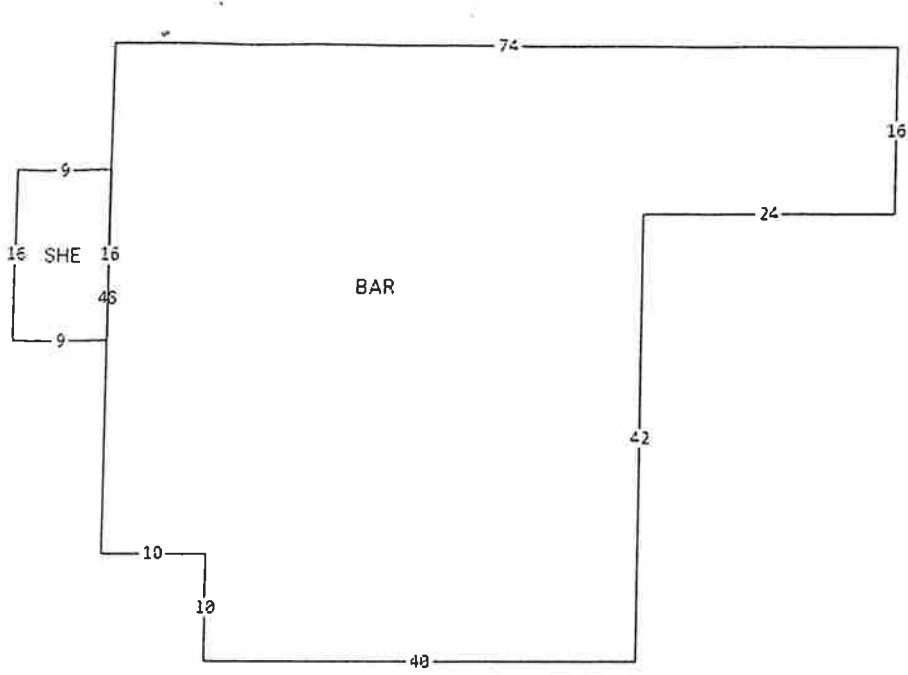
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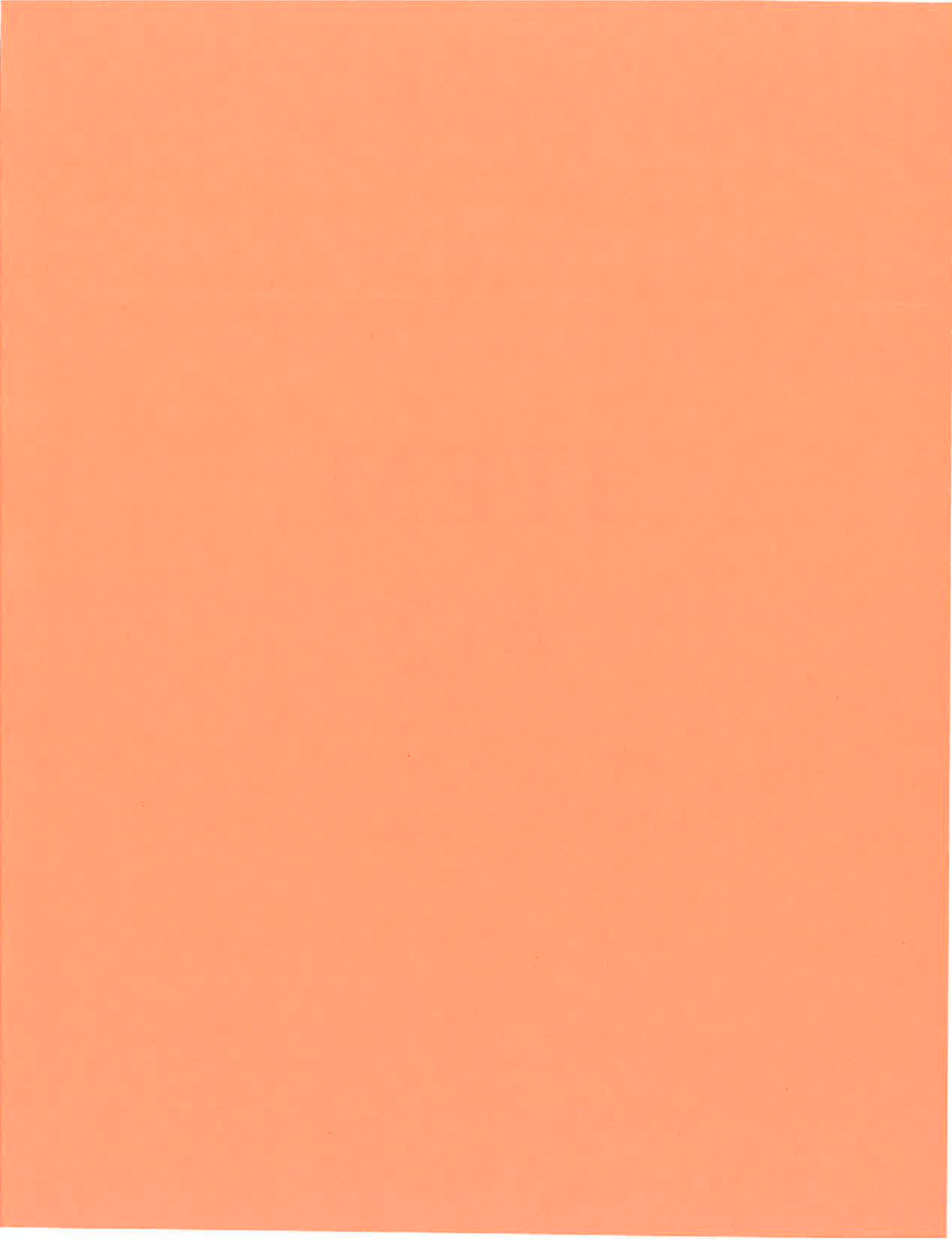
3527 MT DIABLO BLVD #301
LAFAYETTE, CA 94549

ROBERT FABRI

5705 TAPPAN DR
RENO, NV 89523

ITEM

#12



AN ORDINANCE AMENDING THE YERINGTON CITY CODE TITLE 7 PUBLIC WAYS AND PROPERTY, CHAPTER 4 CITY BOUNDARIES AND ANNEXATIONS, AMENDING SECTION 7-4-4 ADDITIONS TO CITY LIMITS AND OTHER MATTERS PROPERLY RELATING THERETO.

The City Council of the City of Yerington, Nevada do ordain as follows:

Section 7-4-4 Additions to City Limits currently reads as follows:

Section 7-4-4 Additions to City Limits:

<u>Date</u>	<u>Ordinance</u>	<u>Acreage Added</u>
12-20-2004	04-09	1,363.95
3-14-2005	05-02	3,193.88
10-10-2005	05-12	89.148
4-24-2006	06-02	233.530
6-9-2014	14-02	1.56
10-12-2015	15-01	13,072.69
1/22/2018	18-01	3,251.38
6/11/2018	18-03	20.7
1/10/2022	22-01	25.27

Shall be and is hereby amended to add the additional acreage below.

<u>Date</u>	<u>Ordinance</u>	<u>Acreage Added</u>
5/23/2022	22-03	.96

Section 7-4-4 Additions to City Limits – The city limits of the City shall be enlarged by an additional .96 acres.

PROPOSED on the 11th day of April 2022.

PROPOSED BY:

PASSED on the 23rd day of May 2022.

31 AYES: Councilmembers;

32 NAYS:

33 ABSENT:

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Mayor John Garry

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41

42 ATTEST:

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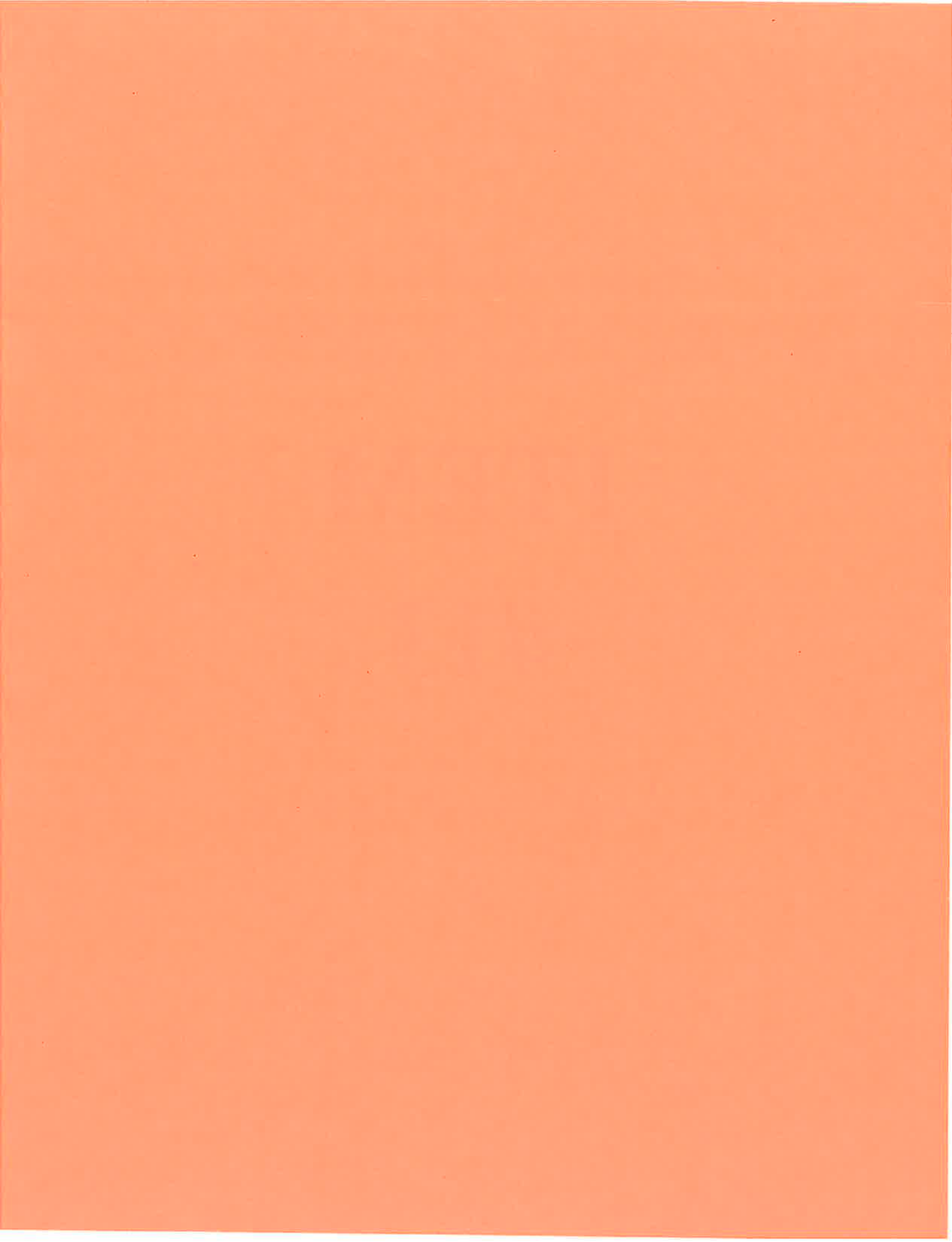
Sheema Shaw, City Clerk

48

49

ITEM

#13



CITY OF YERINGTON
DBE PROGRAM – 49 CFR PART 26

February 4, 2022

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Yerington (the City), owner of the Yerington Municipal Airport O43, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, The City has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

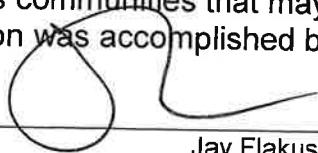
It is the policy of the City to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City policy to engage in the following actions on a continuing basis to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Jay Flakus has been delegated as the DBE Liaison Officer. In that capacity, Mr. Flakus is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the City Council and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on the City DOT-assisted contracts. The distribution was accomplished by U.S. Mail.

Signature: _____



Jay Flakus, DBELO

Date: _____

02/09/2022

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are elaborated in the policy statement on the first page of this program.

Section 26.3 Applicability

The City is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The City will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT

The City will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to FAA as follows:

The City will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The City will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

Bidders List

The City will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and

subcontractors who seek to work on the City's DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms. A Bidders List Collection Form can be found in Attachment 3 to this program.

This information will be collected from the following sources:

- *Nevada Contractors Board List of Licensed Contractors*
- *Past project bidders*
- *The Nevada Department of Transportation's Nevada Unified Certification Program (NUCP) Certified DBE Vendor List*

The link to the NUCP Certified DBE Vendor List can be found in Attachment 4 to this DBE Program.

Gross receipt bracket information (e.g., *less than \$500,000; \$500,000 – \$1 million; \$1-2 million, \$2-5 million, etc.*) will be requested from vendors gathered from sources shown above.

Records retention and reporting:

The City will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the City will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the City financial assistance agreement.

Section 26.13 Federal Financial Assistance Agreement

The City has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the City signs with a DOT operating administration (or a primary recipient) will include the following assurance:

"The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The City's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for

enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

Contract Assurance: The City will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

"The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) *Withholding monthly progress payments;*
- 2) *Assessing sanctions;*
- 3) *Liquidated damages; and/or*
- 4) *Disqualifying the contractor from future bidding as non-responsible.*

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The City is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the City is in compliance with it and Part 26. The City will continue to carry out this program until all funds from DOT financial assistance have been expended. The City does not have to submit regular updates of the DBE program document, as long as it remains in compliance. Significant changes in the program, including those required by regulatory updates, will be submitted for DOT submittal.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the City:

JAY FLAKUS, DBELO
14 EAST GOLDFIELD AVENUE
YERINGTON, NEVADA 89447
(775) 463-3511
E-MAIL: jayf@yerington.net

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provision of 49 CFR Part 26. The DBELO is the DBELO. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one additional City Employees (City Clerk) as well as a consulting engineer and attorney to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the City to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use of these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

In an effort to identify and use such institutions, using the State of Nevada Unified Certification Program (NUCP) vendor directory, the City did not find any DBE financial institutions in Nevada. The following NAICS Codes were used: 522110 (Commercial Banking), 522130 (Credit Unions), 521110 (Monetary Authorities – Central Banks) and 522291 (Consumer Lending).

The DBELO of the City will investigate financial institutions established within the community which are owned by socially and economically disadvantaged individuals annually. When a

financial institution owned and operated by socially and economically disadvantaged individuals is opened during the period of this approved program, the DBELO will recommend their services to the City Council and provide notification to prime contractors with solicitation documents.

Section 26.29 Prompt Payment Mechanisms

The City requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the City established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the City.

City ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the City has selected the following method to comply with this requirement:

- The City will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

To implement this measure, City includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime contract:

"The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed."

From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Owner until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor."

Section 26.31 Directory

The City uses the NUCP directory maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The link to the NUCP directory can be found in Attachment 4 to this program.

Section 26.33 Over-concentration

The City has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The City implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the City's DBE program.

The City actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

The City undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- *Use of an automated system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system*

The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the City's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The City proactively reviews contract payments to subcontractors including DBEs monthly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City by the prime contractor.

Prompt Payment Dispute Resolution

The City will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

Methods and Procedures to Resolve Disputes

A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of the contract:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents and arising after final payment has been made.

B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the

Supplementary Conditions; or

2. agree with the other party to submit the dispute to another dispute resolution process; or

3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

C. All matters subject to final resolution under this Article will be decided by arbitration in accordance with the rules of Hon. Jerry Whitehead, Mediation & Arbitration Services, subject to the conditions and limitations of this paragraph. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.

D. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information.

The demand for arbitration will be made within the specific time required in this Article, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph D below.

E. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.

F. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.

G. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.

H. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.

For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

The City has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

The following is included in the project contract(s):

Prompt Payment

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Owner until the final payment is made, except as may be provided (at the Contractor's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section. The balance 90 percent of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the work has been completed, the Engineer shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except

when such excess quantities have been determined by the Engineer to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection 90-09 titled ACCEPTANCE AND FINAL PAYMENT of this section.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City to resolve prompt payment disputes, the affected subcontractor may refer to the following procedure in the contract documents:

Article 17– Final Resolution of Disputes states the following:

17.01 Methods and Procedures

A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents and arising after final payment has been made.

B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
2. agree with the other party to submit the dispute to another dispute resolution process; or
3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

SC-17.02 Arbitration

A. All matters subject to final resolution under this Article will be decided by arbitration in accordance with the rules of **Hon. Jerry Whitehead, Mediation & Arbitration Services**, subject to the conditions and limitations of this paragraph. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.

B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in this Article, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph SC- 7.02.D below.

C. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.

D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.

E. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.

F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.

SC-17.03 Attorneys' Fees: For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

Enforcement Actions for Noncompliance of Participants

The City will provide appropriate means to enforce the requirements of §26.29. These means include:

- *Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract*
- *Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders*

constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met

The City will actively implement the enforcement actions detailed above.

A DBE Monitoring and Enforcement Mechanisms statement can be found in Attachment 7 of this program.

Monitoring Contracts and Work Sites

The City reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by [DBELO/compliance team/project managers/consultant/etc.]. Contracting records are reviewed by [DBELO/compliance team/project managers/consultant/etc.]. The City will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

The City has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the City to be considered by DOT as implementing this DBE program in good faith.**

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The City will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value