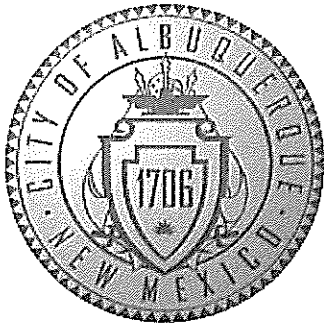


EC-25-399



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

03/31/2025

TO: Brook Bassan, President, City Council

FROM: Timothy M. Keller, Mayor



SUBJECT: Mayor's Recommendation of Award for RFP-2025-647-OCC-ED, Office of the City Clerk Department, Personnel Hearing Officers

The City of Albuquerque's Office of the City Clerk Department, in conjunction with the Department of Finance and Administrative Services, Purchasing Division, issued the RFP for Personnel Hearing Officers. The RFP will allow the awarded proposer to provide Personnel Hearing Officers to the Office of the City Clerk.

The RFP was posted on the Purchasing e-Procurement, Bonfire website on January 13th, 2025.

The City received two (2) responses to this solicitation. The ad hoc evaluation committee evaluated and scored the proposals received in accordance with the evaluation criteria published in the RFP. After thoroughly reviewing and scoring the proposals, Coppler Law Firm P.C. and Ripley B. Harwood, PC scored the highest of the responsive offerors. The ad hoc committee found Coppler Law Firm P.C. and Ripley B. Harwood, PC to be both responsive and qualified and recommends an award to the offeror named.

I concur with this recommendation.

The City of Albuquerque's Office of the City Clerk Department will manage this contract.

**Mayor's Recommendation of Award for RFP-2025-647-OCC-ED, Office of the City Clerk
Department Personnel Hearing Officers**

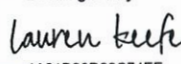
Approved:

Approved as to Legal Form:

Initial
MW

Initial
MKS

 5/12/25
Samantha Sengel, EdD Date
Chief Administrative Officer

DocuSigned by:
 5/7/2025 | 9:42 AM MDT
1A21D96D32C74EE... Date
City Attorney

Recommended:

DocuSigned by:
 5/29/2025 | 9:48 AM MDT
49D7E50AAABD429... Date
Director

Cover Analysis

1. What is it?

This is a contract request for RFP-2025-647-OCC-ED, City Clerk Personnel Hearing Officers for Fiscal Years 2026 and 2027.

2. What will this piece of legislation do?

This agreement allows the Office of the City Clerk to enter into a contract with Coppler Law Firm P.C. and Ripley B. Harwood, PC, to continue supplying the City Clerk's Office with Personnel Hearing Officers.

3. Why is this project needed?

This project allows the employees of the City of Albuquerque's City Clerk's office to have access to Personnel Hearing Officers.

4. How much will it cost, and what is the funding source?

The contracts awarded and approved through this legislation will be funded from City Council appropriations from the General Fund to the budget of the Administrative Hearing Office. The contracts are \$70,000 for Coppler Law Firm P.C, \$30,000 for Ripley Harwood, for a total of \$100,000 over a two-year period. Funding is through Fund 110, Department Number 1320000.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

There is no revenue source associated with this contract.

6. What will happen if the project is not approved?

The City will not be able to address personnel disputes.

7. Is this service already provided by another entity?

No.

FISCAL IMPACT ANALYSIS

TITLE: Office of the City Clerk Personnel Hearing Officers, RFP-2025-647-OCC-ED

R: O:
FUND: 110 General Fund
DEPT: City Clerk

- ☒ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2023	Fiscal Years 2024	2025	Total
Base Salary/Wages	-	-	-	-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses	-	-	-	-
Property	-	-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
☒ Estimated revenues not affected				
☐ Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.
* Range if not easily quantifiable.

Number of Positions created

COMMENTS: Reoccurring funding will cover the cost of the 2 year contract (FY26 & FY27).

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY: Rachel Rodarte

DocuSigned by:
Rachel Rodarte
8261618746F140F

FISCAL ANALYST

APPROVED:

DocuSigned by:
Ethan Watson 4/29/2025 | 9:48 AM MDT
48D7C5E0AAABD428

DIRECTOR (date)

REVIEWED BY:

Signed by:
Stephen Morales
826593C084A3403

EXECUTIVE BUDGET ANALYST

DocuSigned by:
Donna Sandoval 5/7/2025 | 9:31 AM MDT
08FAD687C3CA4E2

BUDGET OFFICER (date)

Signed by:
Christine Bourner
E07C387348CC47D

CITY ECONOMIST



City of Albuquerque
Department of Finance and Administrative Services

Timothy M. Keller, Mayor

Interoffice Memorandum Date 3/25/2025 | 12:58 PM MDT

TO: Dr. Samantha Sengel, Chief Administrative Officer
FROM: Ethan D. Watson, Director, Office of the City Clerk
SUBJECT: **Recommendation of Award –**
RFP Number: 2025-647-OCC-ED
RFP Name: Personnel Hearing Officers

DS
15

The Department of Finance and Administrative Services, Purchasing Division, issued the subject solicitation in conjunction with the Office of the City Clerk Department and developed an RFP for a Personnel Hearing Officer.

The solicitation was posted on the Purchasing website and advertised in the Albuquerque Journal. Two (2) responses were received for evaluation.

The Ad Hoc Evaluation Committee evaluated and scored the responses in accordance with the evaluation criteria published in the RFP and recommends award of contract to Coppler Law Firm P.C. and Ripley B. Harwood, PC.

I concur with this recommendation. Listed below are the composite scores for the top three responses received:

COMPANY NAME	SCORE
Coppler Law Firm P.C.	920
Ripley B. Harwood, PC	881.67

The Department that will be managing this contract is the Office of the City Clerk.

Approved:

DocuSigned by:

3/25/2025 | 8:23 PM MDT

Dr. Samantha Sengel (Date)
Chief Administrative Officer

Attachment: Scoring Summary





RFP-2025-647-OCC-ED - Personnel Hearing Officers
Scoring Summary

Active Submissions

	Total	A - Evaluation Factors:	A-1 - The Offeror's general approach and plans to meet the requirements of the RFP.	A-2 - The Offeror's Professional qualifications.	A-3 - The Offeror's current experience. Describe how the Offerors experience directly relates to Scope of Services in Part 3.	A-4 - The Offeror's past experience on contracts for services of similar scope and size. Describe how the Offerors experience directly relates to Scope of Services in Part 3.	A-5 - Writing Sample.	B - Required Items	B-1 - Proposal	B-2 - Signed Pay Equity Form	B-3 - Do you agree to the City's terms and conditions?	B-4 - Do you agree to provide the required insurance?	B-5 - I Acknowledge Addendum #1?
Supplier	/ 1,000.00 pts	/ 1,000.00 pts	/ 200 pts	/ 200 pts	/ 150 pts	/ 150 pts	/ 300 pts	/ 0 pts	Pass/Fail	Pass/Fail	Pass/Fail	Pass/Fail	Pass/Fail
Coppler Law Firm P.C.	920	920	178.33	191.67	145	141.67	263.33	0	Pass	Pass	Pass	Pass	-
Ripley B. Harwood, PC	881.67	881.67	160	191.67	145	130	255	0	Pass	Pass	Pass	Pass	-

City of Albuquerque

Request for Proposals

Solicitation Number: RFP-2025-647-OCC-ED

Personnel Hearing Officers
January 13, 2025



Deadline for Receipt of Proposals: February 18, 2025: 4:00 p.m. (Mountain Time)
The City eProcurement System will not allow Proposals to be submitted after this date and time.

City of Albuquerque
Department of Finance and Administrative Services
Purchasing Division
V2024.07.10 JLB

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INTRODUCTION

The purpose of this Request for Proposal (RFP) is to solicit proposals from qualified individuals or firms to provide services as Personnel Hearing Officers pursuant to the Merit System Ordinance, §3-1-1 et seq. ROA 1994 and the Independent Hearing Office Ordinance Section §2-7-2 ROA 1994.

Personnel Hearing Officers shall impartially conduct evidentiary hearing on City employee appeals from suspension, demotion, and discharge and timely submit proposed findings of fact and evidentiary hearing summaries to the Personnel Board.

Personnel Hearing Officers shall be subject to the Code of Judicial Conduct, Rule 21-001, et seq. NMRA 1998, as currently enacted or amended, as the Code applies to probate, part-time magistrate judges and municipal judges.

Personnel Hearing Officers shall not be actively involved in the political affairs of the City and are not considered City employees for any purpose.

The City of Albuquerque reserves the right to award any number of contracts under this RFP, or to decline to award a contact under this RFP.

Note: An award of contact under this RFP does not guarantee the successful Offeror any set amount of work or dollar amount for services relating to this procurement.

PART 1

INSTRUCTIONS TO OFFERORS

1.1 RFP Number and Title: RFP-2025-647-OCC-ED, “Personnel Hearing Officers”

1.2 Proposal Due Date: February 18, 2025 - NLT 4:00 PM (Local Time)

The time and date Proposals are due shall be strictly observed.

1.2.2 Questions: All questions shall be submitted in written format in the City’s eProcurement system prior to the close date for questions and answers.

1.3 Purchasing Division: This Request for Proposals (“RFP”) is issued on behalf of the City of Albuquerque by its Purchasing Division, which is the sole point of contact during the entire procurement process.

1.4 Authority: Chapter 5, Article 5 of the Revised Ordinances of the City of Albuquerque, 1994, (“Public Purchases Ordinance”). The City Council, pursuant to Article 1 of the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, has enacted this Public Purchases Ordinance as authorized by such provisions and for the purpose of providing maximum local self-government. To that end, it is intended that this Public Purchases Ordinance shall govern all purchasing transactions of the City and shall serve to exempt the City from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98K, NMSA 1978.

1.5 Acceptance of Proposal: Acceptance of Proposal is contingent upon Offeror’s certification and agreement by submittal of its Proposal, to comply and act in accordance with all provisions of the following:

1.5.1 City Public Purchases Ordinance

1.5.2 City Purchasing Rules and Regulations: These Rules and Regulations (“Regulations”) are written to clarify and implement the provisions of the Public Purchases Ordinance. These Regulations establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of goods, services, and construction, as applicable, under the authority of the Ordinance.

1.5.3 Civil Rights Compliance: Acceptance of Proposal is contingent upon the Offeror’s certification and agreement by submittal of its Proposal, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances and resolutions relating to the enforcement of civil rights and affirmative action. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Rights Office.

1.5.4 Americans with Disabilities Act Compliance: The Offeror certifies and agrees, by submittal of its Proposal, to comply and act in accordance with all applicable provisions of the Americans With Disabilities Act of 1990 and federal regulations promulgated thereunder.

1.5.5 Insurance and Bonding Compliance: Acceptance of Proposal is contingent upon Offeror's ability to comply with the insurance requirements as stated herein. Please include a certificate or statement of compliance in your Proposal and bonds as required.

1.5.6 Ethics:

1.5.6.1 Fair Dealing. The Offeror warrants that its Proposal is submitted and entered into without collusion on the part of the Offeror with any person or firm, without fraud and in good faith. Offeror also warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be offered or given by the Offeror, or any agent or representative of the Offeror to any officer or employee of the City with a view toward securing a recommendation of award or subsequent contract or for securing more favorable treatment with respect to making a recommendation of award.

1.5.6.2 Conflict of Interest. The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under the contract resulting from this RFP. The Offeror also warrants that, to the best of its knowledge, no officer, agent or employee of the City who shall participate in any decision relating to this RFP and the resulting contract, currently has, or will have in the future, a personal or pecuniary interest in the Offeror's business.

1.5.7 Participation/Offeror Preparation: The Offeror may not use the consultation or assistance of any person, firm company who has participated in whole or in part in the writing of these specifications or the Scope of Services, for the preparation of its Proposal or in the management of its business if awarded the contract resulting from this RFP.

1.5.8 Debarment or Ineligibility Compliance: By submitting its Proposal in response to this RFP, the Offeror certifies that (i) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (ii) should any notice of debarment, suspension, ineligibility or exclusion be received by the Offeror, the Offeror will notify the City immediately.

Any Proposal received from an Offeror that is, at the time of submitting its Proposal or prior to receipt of award of a contract, debarred by or otherwise ineligible to

receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected.

Upon receipt of notice of debarment of an Offeror awarded a contract as a result of this RFP ("Contractor"), or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, the City shall have the right to cancel the contract with the Contractor resulting from this RFP for cause in accordance with the terms of said contract.

1.5.9 Goods Produced Under Decent Working Conditions: It is the policy of the City not to purchase, lease, or rent goods for use or for resale at City owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its Proposal in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines "under decent working conditions" as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. [*Council Bill No. M-8, Enactment No. 9-1998*]

1.5.10 Graffiti Free: When required, the Contractor will be required to furnish equipment, facilities, or other items required to complete these services, that are graffiti-free. Failure of Contractor to comply with this requirement may result in cancellation of the contract resulting from this RFP.

1.6 City Contact: The sole point of contact for this RFP is the City of Albuquerque Purchasing Division. Questions regarding this RFP should be directed to the following Purchasing representative unless otherwise specified in the solicitation. The City Contact will communicate with Offerors through its e-procurement system, Bonfire. Offerors will receive e-mail notifications from Bonfire to the e-mail that Offeror included in its Bonfire registration. Offerors are responsible for monitoring any communications sent through Bonfire and responding to any requests for information or directives within stated deadlines. Offerors who fail to abide by this instruction may be deemed nonresponsive.

- Estevan Vargas, Assistant Procurement Officer, Department of Finance and Administrative Services, Purchasing Division
- Phone: (505) 768-4945 or E-Mail: efvargas@cabq.gov
- Post Office Box 1293, Albuquerque, New Mexico 87103

1.7 Contract Management: The contract resulting from this RFP will be managed by

the City Clerk's Office.

1.8 Clarification: Any explanation desired by an Offeror regarding the meaning or interpretation of this RFP must be requested in writing not less than ten (10) working days prior to the deadline for the receipt of Proposals to allow sufficient time for a reply to reach all Offerors before the submission of their Proposals. No extension of time will be granted based on submission of inquiries subsequent to the required date nor will such inquiries be answered. All inquiries must be directed to the Purchasing Division as stated herein and must be submitted through the City's eProcurement system Bonfire. **The City will not respond to questions that are submitted by any other means than electronically through the City's eProcurement system.** Oral explanations or instructions given before the award of the contract or at any time will not be binding. Purchasing shall prepare answers to questions in the form of Addenda to this RFP and shall post all such Addenda to the online eProcurement System.

1.9 Submission of Proposals. The Offeror's Proposal must be submitted **electronically** through the eProcurement system pursuant to the following requirements:

1.9.1 Electronic Copy. Submit your complete Proposal including all forms, attachments, exhibits, Technical Proposal, Cost Proposal, etc. using the eProcurement System at <https://cabq.bonfirehub.com/portal/?tab=openOpportunities>. Please allow a minimum of two (2) business days to submit your proposal. If you do not have a username and password, please register as this is the only method to submit electronically on the Bonfire portal. Please make sure to register on the system in order to receive notices and submit a response to a solicitation. For assistance, please contact support@gobonfire.com or 1-800-354-8010. **Failure to submit your proposal electronically through the City's eProcurement system shall result in your proposal being deemed nonresponsive.**

1.9.2 Format. Each file uploaded to the eProcurement System shall be in single PDF format unless otherwise indicated. The City's preferred format is Optical Character Recognition (OCR) searchable PDF format. Do not encrypt files and do not password protect the documents submitted.

1.9.3 ALL PROPOSALS MUST BE RECEIVED BY THE CITY PURCHASING DIVISION AS SPECIFIED HEREIN. IF YOU FAIL TO COMPLY WITH THE SUBMISSION REQUIREMENTS IN THIS SECTION 1.9, THE CITY SHALL DEEM YOUR PROPOSAL NONRESPONSIVE.

1.9.4 No other methods of Proposal delivery. Neither telephone, facsimile, nor telegraphic Proposals shall be accepted.

1.9.5 Modification. Proposals may be modified or withdrawn only by written notice, provided such notice is received prior to the Proposal Due Date.

1.9.6 Receipt of Proposals. The only acceptable evidence to establish the time of receipt of Proposals by City Purchasing Office is the time-date stamp of the eProcurement

System.

1.9.7 Acknowledgment of Addenda to the Request for Proposals. Receipt of Addenda to this RFP by an Offeror must be acknowledged in the City's eProcurement system. Failure to acknowledge an Addendum may result in your response being deemed non-responsive.

1.10 Modifications to Scope of Services: In the event that sufficient funds do not become available to complete each task in the Scope of Services, the Scope of Services may be amended, based upon the cost breakdown required in the Cost Proposal.

1.11 Required Contract Terms: The Required Contract Terms can be accessed at this link <https://www.cabq.gov/dfa/purchasing-division/vendor-services/terms-and-conditions>, click on "Request for Proposals Required Contract Terms". The Offeror certifies that it accepts the Required Contract Terms, or has uploaded its exceptions to the Required Contract Terms in the City's e-Procurement system, under "Requested Information" "Exceptions to Section 1.11 Required Contract Terms." Any exceptions shall be identified by the RFP Section, Subsection, and must state the specific exception the Offeror has, as well as any alternative language. The City's receipt of exceptions in a response is not an acceptance of any requested changes to the Required Contract Terms. The Required Contract Terms may differ from the terms in the final contract awarded under this RFP.

1.12 Contract Term: The contract resulting from this solicitation is anticipated to have a term of _____ with possible extensions of XXX (X) years.

1.13 Evaluation Period: The City reserves the right to analyze, examine and interpret any Proposal for a period of ninety (90) days after the hour and date specified for the receipt of Proposals. The City reserves the right to extend the evaluation period if it feels, in its sole discretion, such an extension would be in the best interest of the City.

1.14 Evaluation Assistance: The City, in evaluating Proposals, reserves the right to use any assistance deemed advisable, including City contractors and consultants.

1.15 Rejection and Waiver: The City reserves the right to reject any or all Proposals and to waive informalities and minor irregularities in Proposals received.

1.16 Award of Contract:

1.16.1 When Award Occurs: Award of contract occurs when a Purchase Order is issued or other evidence of acceptance by the City is provided to the Offeror. A Recommendation of Award does not constitute award of contract.

1.16.2 Award: If a contract is awarded, it shall be awarded to the responsive and responsible Offeror whose Proposal conforming to this RFP will be most advantageous to the City as set forth in the Evaluation Criteria.

1.17 Cancellation: This RFP may be canceled for any reasons and any and all Proposals may be rejected in whole or in part when it is in the best interests of the City.

1.18 Negotiations: Negotiations may be conducted with the Offeror(s) recommended for award of contract.

1.19 City-Furnished Property: No material, labor, or facilities will be furnished by the City unless otherwise provided for in this RFP.

1.20 Public Records:

1.20.1 The Purchasing Division's procurement file and any documents relating to this RFP, including the Proposals submitted by Offerors, shall be open to public inspection in accordance with applicable law after the recommendation of award of a contract has been approved by the Mayor or the Mayor's designee.

1.20.2 An Offeror who chooses to submit material they consider a "Trade Secret" must do so in a segregated file clearly designated as containing trade secrets both in the file name and within the contents of the file itself. These segregated files are to be used by the City for reference only. An Offeror's failure to segregate such materials constitutes a failure to reasonably, under the circumstances, maintain the materials' secrecy and Offeror indemnifies and holds the City harmless for any and all liability resulting from the disclosure of any materials not segregated as described above.

1.20.3 If an Offeror submits with a proposal material required by law to be kept confidential, the Offeror must segregate such material in a separate file. Such a file should be clearly designated as "Legally Confidential" in both the file name and within the contents of the file. The contents of the file must include a description and citation to the legal basis for why the material must be kept confidential. Failure to segregate the material and describe the legal basis for why it is to be kept confidential may result in the information being disclosed. Designating the entire proposal confidential is not acceptable without providing the legal basis and may result in the information being disclosed. Offeror indemnifies and holds the City harmless for any and all liability resulting from such disclosure resulting from information not segregated as described above.

1.20.4 Pricing, makes and models or catalog numbers of items offered, delivery terms, and terms of payment shall not be designated as trade secrets or required to be kept confidential by law.

1.20.5 The City will endeavor to restrict the release of material segregated and designated as "Trade Secret" or "Legally Confidential" to only those individuals involved in the review and analysis of the Proposals, and to any other party as required by law or court order. Under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978) ("Act") the City may redact trade secrets and other material required to be kept confidential by law, but may not redact proprietary or confidential information. Any Proprietary or Confidential Data provided as part of a Proposal is subject to public inspection under the Act.

Notwithstanding any provision of this RFP, the City shall not be responsible or liable to the Offeror for any disclosure of records required by the Act or an order of a court or other tribunal with jurisdiction over the City.

1.21 Procurement Preferences: A Pay Equity Preference as provided in Section 5-5-31 R.O.A. 1994 (as amended by C/S O-17-33) and the State Preferences as provided in 13-1-21 NMSA 1978 are applicable to this solicitation. To request the application of a preference, as applicable, Offeror shall submit with its Proposal a City Pay Equity Preference Form or the New Mexico State Certification for the requested preference.

1.22 Request for Proposals Protest Process:

1.22.1 RFP Documents: If the protest concerns the specifications for the RFP or other matters pertaining to the solicitation documents, the protest must be filed with the Chief Procurement Officer no later than 5:00 p.m., ten (10) business days prior to the deadline for the receipt of Proposals.

1.22.2 Recommendation of Award: If the protest concerns the Recommendation of Award, the protest must be filed with the Chief Procurement Officer no later than 5:00 p.m. of the tenth (10th) business day after the receipt of notice of the Recommendation of Award.

1.22.3 Timely Protests: Protests must be received by the Chief Procurement Officer prior to the appropriate deadline as set out herein, or they will be rejected. The Chief Procurement Officer may waive the deadline for good cause, including a delay caused by the fault of the City. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.

1.22.4 How to File a Protest: Any Offeror who is aggrieved in connection with a competitive solicitation or recommendation of award of a contract may protest to the City Chief Procurement Officer. The protest shall be addressed to the Chief Procurement Officer, must be submitted in written form and must be legible. Protests may be electronically delivered via email or mailed. Facsimile, telephonic, telegraphic or any other type of electronic protests will not be accepted.

1.22.5 Required Information: The protest shall contain at a minimum the following:

1.22.5.1 The name and address of the protesting party;

1.22.5.2 The number of the competitive solicitation;

1.22.5.3 A clear statement of the reason(s) for the protest detailing the provisions believed to have been violated;

1.22.5.4 Details concerning the facts, which support the protest;

1.22.5.5 Attachments of any written evidence available to substantiate the claims of the protest; and

1.22.5.6 A statement specifying the ruling requested.

1.22.6 Delivery of Protests:

1.22.6.1 By Mail: Protests may be mailed in an envelope marked “PROTEST” with the solicitation number. Protests which are mailed should be addressed as follows:

Chief Procurement Officer
City of Albuquerque, Purchasing Division
P.O. Box 1293
Albuquerque, NM 87103
PROTEST, RFP Number

1.22.6.2 By Electronic Mail: Protests may be emailed to:

Kathleen Oney, Acting Chief Procurement Officer
efvargas@cabq.gov

The message should clearly indicate “PROTEST” and the RFP number in the subject line.

1.22.7 Protest Response by Chief Procurement Officer: The Chief Procurement Officer will, after evaluation of a protest, issue a response. Only the issues outlined in the written protest will be considered by the Chief Procurement Officer.

1.22.8 Protest Hearing: If a hearing is requested, the request must be included in the protest and received within the time limit. Only the issues outlined in the protest will be considered by the Chief Procurement Officer, or may be raised at a protest hearing. The granting of a hearing shall be at the discretion of the Chief Procurement Officer following review of the request.

1.23 Insurance:

1.23.1 General Conditions: The City will require the successful Offeror, referred to as the Contractor, to procure and maintain at its expense during the term of the contract resulting from the RFP, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the contract. Upon execution of the contract and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City as well as the rider or endorsement showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of

required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided.

1.23.2 Approval of Insurance: Even though the Contractor may have been given notice to proceed, it shall not begin any work under the contract resulting from this RFP until the required insurance has been obtained and the proper certificates (or policies) are filed with the City. Neither approval nor failure to disapprove certificates, policies, or the insurance by the City shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part of the contract is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

1.23.3 Coverage Required: The kinds and amounts of insurance required are as follows:

1.23.3.1 Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$2,000,000	Per Occurrence
\$2,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of the contract resulting from this RFP.

1.23.3.2 Automobile Liability Insurance. A comprehensive automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

1.23.3.3 Workers' Compensation Insurance. Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico,

(the "Act"). If the Contractor employs fewer than three employees and has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of the contract resulting from this RFP.

1.23.4 Increased Limits: During the life of the contract the City may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

1.23.5 Additional Insurance: The City may, as a condition of award of a contract, require a successful Offeror to carry additional types of insurance. The type and limit of additional insurance is dependent upon the type of services provided via the contract by the successful Offeror.

1.24 Pay Equity Documentation. All Proposals shall include a Pay Equity Reporting Form that can be accessed at <https://www.cabq.gov/gender-pay-equity-initiative>. Offerors who believe they are exempt because they are an out-of-state contractor (meaning that you have no facilities and no employees working in New Mexico) are not required to report data, but must still submit a Pay Equity Reporting Form with the box verifying the exempt status checked. **Any Proposal that does not include a Pay Equity Reporting Form shall be deemed nonresponsive, as stated in the Public Purchases Ordinance, 5-5-31.** A Pay Equity Reporting Form will be automatically issued within two (2) business days of completing your information at the link above. To ensure you have your form before the deadline for solicitation close, please access the link at least three (3) business days prior to the solicitation deadline. Please contact the "City Contact" identified above in Section 1.6 with any questions about the Pay Equity Reporting Form.

PART 2

PROPOSAL FORMAT

A “Proposal” consists of two distinct sections—a “Technical Proposal” and a “Cost Proposal”—that are submitted separately in Bonfire. Failure to submit the Technical Proposal and Cost proposal separate, shall result in the City deeming your submission non-responsive.

2.1 2.1 Technical Proposal Format, Section One

2.1.1 Offeror Identification: State name and address of your organization or office and nature of organization (individual, partnership or corporation, private or public, profit or non-profit). Subcontractors, if any, must be identified in a similar manner. Include name, email address and telephone number of person(s) in your organization authorized to execute the contract resulting from this RFP. Submit a statement of compliance with all laws stated herein. Submit a statement of agreement to the Required Contract Terms; state exceptions. Show receipt of Addenda if applicable. Provide a statement or show ability to carry the insurance specified.

2.1.2. Qualifications: Hearing officers that adjudicate personnel hearing shall be attorneys with a minimum of five (5) years of actual working experience, be admitted to practice law in the State of New Mexico, and understand administrative law. City Ordinance Section 2-7-8-5- ROA 1994.

2.1.2.1 The successful Offeror shall remain licensed to practice law in the State of New Mexico in good standing with the New Mexico State Bar during the term of the contract awarded under this RFP.

2.1.2.2 The successful Offeror shall abide by the Code of Judicial Conduct Rules 21- 001, et seq., NMRA 1998, as current and subsequently amended.

2.1.3 Experience:

2.1.3.1 Current Experience. State relevant experience of the company and person(s) who will be actively engaged in the proposed services, including experience of subcontractors. Submit resumes for the individuals who will be performing the services for the City.

2.1.3.2 Past Experience. Describe a minimum of three (3) contracts involving services of similar scope and size, which are now complete; state for whom the services were performed, year completed, and a letter of reference for each regarding the work. References must be for services performed in the past three to five (3 to 5) years. DO NOT use City employees or any City elected officials as a reference. The City will not contact and will not assign

any evaluation points for references from City employees or elected officials.
State relevant experience with other municipalities or government entities.

2.1.4 Management Summary: Describe individual staff and subcontractor's responsibilities with lines of authority and interface with the City of Albuquerque staff. Describe resources to be drawn from in order to complete the services.

2.1.5 Submissions:

2.1.5.1 Submit a writing sample with the proposal. The writing sample should be a recommendation of the personnel board, a sample decision or proposed Findings of Facts and Conclusion of Law, preferably in the area of employment law or a personnel matter, similar to that described in section 3.1 below.

2.1.5.2 Submit a statement of qualifications demonstrating compliance with section 2.1.2. above.

2.1.5.3 Submit a Certificate of Good Standing. Certificates of Good Standing are issued by the New Mexico Supreme Court, and may be obtained by calling (505) 827-4860 or emailing the Supreme Court Clerk (nmsupremecourtclerk@nmcourts.gov) .

Cost Proposal Format, Section Two

2.2 Cost Proposal Format, Section Two

2.2.1 Total Cost: A Flat hourly rate for providing services as City of Albuquerque’s Personnel Hearing Officer shall be based on the following categories:

Personnel Hearings (Primary), will be billed in tenth of an hour increments based on the following fee schedule:

Years	Hourly Rate
5-9.99	\$130
10+	\$160

2.2.2 Appendix A- Cost: Offeror shall submit signed Appendix A agreeing to these fees. The City will not consider any additional fees proposed by Offeror.

2.2.4 All Costs: The fee is inclusive of any applicable gross receipts taxes and insurances. The Offeror should understand that the City will not pay for any amounts not included in the cost Proposal -- for example, insurance or taxes -- and that liability for items not included remains with the Offeror.

2.2.5 Upload Appendix A- Cost separately from the technical proposal. Offeror shall upload the cost proposal in the City’s eProcurement system. **Failure to submit the cost**

proposal separate from the technical proposal shall result in the Offeror's proposal being deemed non-responsive.

2.2.3 Offerors should show detailed costs by task and number of hours dedicated to each task as listed in the specifications.

2.2.4 All Costs: All costs to be incurred and billed to the City should be described by the Offeror for each item, to allow for a clear evaluation and comparison, relative to other Proposals received. All costs should include any applicable gross receipts taxes. The Offeror should understand that the City will not pay for any amounts not included in the cost Proposal -- for example, insurance or taxes -- and that liability for items not included remains with the Offeror.

2.2.5 An example of the preferred format is attached to this RFP. Your response to this section will be used in performing a cost/price analysis.

PART 3

SCOPE OF SERVICES

3.1 The successful Offeror Shall:

3.1.1 Conduct evidentiary hearings on City employee appeals from suspension, demotion and discharge (termination).

3.1.2 Prepare and submit reports to the Personnel Board containing summaries of evidence taken at the hearing. Reports to the Personnel Board shall be submitted within thirty (30) calendar days of the date requested by the Personnel Board.

3.1.3 Prepare and submit proposed Findings of Fact and Recommendations to the Personnel Board. Proposed Findings of Fact and Recommendations to the Personnel Board shall be submitted within thirty (30) calendar days after the record of the hearing is closed.

3.1.4 Perform the duties and obligations as required by the Personnel Hearing Officer requirements set forth in the City Employees Ordinance (§3-1-26 ROA 1994), the Independent Office of Hearing Ordinance (§2-7-8-1 et seq. ROA 1994), any other applicable City Ordinance, any applicable rules and procedures of the Office of the City Clerk and the contract awarded under this RFP.

3.1.5 It is mutually understood and agreed by and between the parties that time is of the essence with respect to services under the contract awarded under this RFP, including the completion of the reports to the Personnel Board containing summaries of evidence taken at the hearing and Proposed Finding of Fact and Recommendations to the Personnel Board. Failure to submit reports within thirty (30) days of the request of the Personnel Board and /or Proposed Findings of Fact and Recommendations to the Personnel Board within thirty (30) calendar days of the date of the hearing may result in a termination of the awarded contract.

PART 4

EVALUATION OF PROPOSALS

4.1 Selection Process. The Mayor of Albuquerque shall name, for the purpose of evaluating the Proposals, an Ad Hoc Advisory Committee. On the basis of the evaluation criteria established in this RFP, the committee shall submit to the Mayor a list of qualified firms in the order in which they are recommended. Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Offeror concerning the type of documentation that will be used by the Ad Hoc Advisory Committee. Offerors should be prepared to respond to requests by the Purchasing Office on behalf of the Ad Hoc Advisory Committee for oral presentations, facility surveys, demonstrations or other areas deemed necessary to assist in the detailed evaluation process. Offerors are advised that the City, at its option, may award this request on the basis of the initial Proposals.

4.1.1 Selection of Finalist Offerors (If Applicable). The Ad Hoc Advisory Committee may select Finalist Offerors (also known as the “short list”). The Purchasing Office will notify the Finalist Offerors. Only Finalist Offerors will be invited to participate in the subsequent steps of the procurement if this Finalist process is used.

4.1. 2. Oral Presentation or Demonstrations by Finalists (If Applicable). Finalist Offerors may be required to present their proposals to the Ad Hoc Advisory Committee (“Oral Presentation”). The Purchasing Office will schedule the time for each Finalist Offeror’s presentation. All Finalist Offeror Oral Presentations will be held remotely via Zoom unless notified otherwise. Each Oral Presentation will be limited to one (1) hour in duration unless notified otherwise. NOTE: The scores from the initial proposal evaluation will only carry over to the Oral Presentation evaluation in the case of a tie score after Oral Presentations.

4.2 Evaluation Criteria. The following general criteria, not listed in order of significance, will be used by the Ad Hoc Advisory Committee in recommending contract award to the Mayor. The Proposal factors will be rated on a scale of **0-1000** with weight relationships as stated below.

4.2.1 Evaluation Factors:

4.2.1 Evaluation Factors:

200 --The Offeror's general approach and plans to meet the requirements of the RFP.

200 -- The Offeror's Professional qualifications.

150 -- The Offeror's current experience. Describe how the Offerors experience directly relates to Scope of Services in Part 3.

150 - The Offeror's past experience on contracts for services of similar scope and size. Describe how the Offerors experience directly relates to Scope of Services in Part 3.

300 --Writing Sample

4.2.2 Cost/Price Factors: The evaluation of cost factors in the selection will be determined by a cost/price analysis using your proposed figures. Please note that the lowest cost is not the sole criterion for recommending contract award.

4.2.3 Cost Evaluation. The cost/price evaluation will be performed by the City Purchasing Division or designee. A preliminary cost review will ensure that each Offeror has complied with all cost instructions and requirements. In addition, Proposals will be examined to ensure that all proposed elements are priced and clearly presented. Cost Proposals that are incomplete or reflect significant inconsistencies or inaccuracies will be scored accordingly or may be rejected by the Ad Hoc Advisory Committee if lacking in information to determine the value/price/cost relative to the services proposed.

**APPENDIX A
COST – FLAT HOURLY RATE**

A Flat hourly rate for providing services as City of Albuquerque’s Personnel Hearing Officer shall be based on the following categories:

Personnel Hearings (Primary), will be billed in tenth of an hour increments based on the following fee schedule:

Years	Hourly Rate
5-9.99	\$130
10+	\$160

I certify these fees will be honored if I (individual hearing officer) is selected as the finalist.

Signature

Date

(Name Printed and Title)

Firm Name

2.1 Technical Proposal

2.1.1 Offeror Identification:

Coppler Law Firm P.C.
645 Don Gaspar Avenue
Santa Fe, NM 87505
505-988-5656
Two Shareholders: Gerald Coppler & Frank Coppler

Subcontractors: none

Persons authorized to execute contract resulting from this RFP:

Gerald Coppler, gcoppler@coppler.com, 505-988-5656.
Frank Coppler, fcoppler@coppler.com, 505-988-5656.

Statement of Compliance:

I, Frank Coppler, hereby state on behalf of the Offeror ("Coppler Law Firm P.C.") that in providing the Scope of Services outlined herein, the Offeror shall Comply with all applicable laws, ordinances, codes of the federal, State, and local governments and all other laws stated herein.

/s/ Frank R. Coppler

Statement of Agreement:

I, Frank Coppler, hereby state on behalf of the Offeror ("Coppler Law Firm P.C."), agreement to the Required Contract Terms, with no exceptions.

/s/ Frank R. Coppler

Receipt of Addenda:

I, Frank Coppler, hereby acknowledge receipt of "Addendum #1," issued February 18, 2025.

/s/ Frank R. Coppler

Statement of Insurance:

I, Frank Coppler, hereby state on behalf of the Offeror ("Coppler Law Firm P.C."), that the Offeror carries the insurance specified and, in the amounts, required for the contract.

/s/ Frank R. Coppler

2.1.2 Qualifications:

All persons at Coppler Law Firm P.C. who will adjudicate personnel hearings are attorneys with a minimum of five (5) years of actual working experience, are admitted to practice law in the State of New Mexico and have an understanding of administrative law.

/s/ Frank R. Coppler

2.1.2.1

If successful the Offeror ("Coppler Law Firm P.C."), shall remain licensed to practice law in the State of New Mexico in good standing with the New Mexico State Bar during the term of the contract awarded under this RFP.

/s/ Frank R. Coppler

2.1.2.2

If successful the Offeror ("Coppler Law Firm P.C."), shall abide by the Code of Judicial Conduct Rules 21-001, et seq., NMRA 1998, as current and subsequently amended.

/s/ Frank R. Coppler

2.1.3 Experience

2.1.3.1 Current Experience.

Coppler Law Firm P.C. ("CLF")

CLF is an active New Mexico professional corporation in good standing with the New Mexico Secretary of State's Office. CLF meets the definition of a "small business" as established by the Small Business Administration (13 C.F.R. § 121.201 – NAICS Code 541199). Currently, the law firm employs four (4) attorneys, two of whom are shareholders (Frank Coppler & Gerald Coppler), one of whom is a senior associate (John Appel) and one of whom is an associate (Joshua Howard) who has been an attorney for approximately 7 years of actual working experience.

CLF has served in the role as general legal advisor to municipal and quasi-municipal corporations throughout the state of New Mexico since 1970, beginning with the incorporation of the town of Red River. In our capacity as legal advisors to municipal and quasi-municipal corporations we are generally referred to as contract city/town/village attorneys.

On a regular basis, with respect to personnel matters, CLF reviews and approves and makes suggestions regarding amendments to municipal personnel

ordinances. In doing so we must stay current with respect to the law governing the details of due process for public employees, and we must be aware of differences in laws and regulations with respect to various classes of public employees such as police, fire, and employees under a collective bargaining agreement.

As attorneys for several municipal corporations, we serve in the role of advising the local officials taking the adverse employment action as well as rendering advice to the reviewing authority. In all instances, CLF, subsequent to the hearing, prepares proposed findings of fact and conclusions of law. As such, through our representation of municipalities and other corporations over the last 40 years, CLF is well versed in the entire personnel hearing process.

We provide the above background to demonstrate how we are called upon by our municipal clients to assist regarding adverse personnel actions. As contract municipal counsel, we wear many hats. For example, a normal day will consist of advising a City Manager regarding the necessity of regular formal written employee evaluations, starting with managers, assistants, and department heads, down through the ranks as being necessary taking adverse employment actions. The attorney is not the attorney for the manager, we are attorneys for the corporation, and this is emphasized in the follow up communications as an adverse action goes up the ladder from initiating supervisor to department head, manager, to the CEO and finally to appellate review. It is our daily practice whenever an employee, no matter the position, seeks our advice on a personnel matter, first we inquire whether this relates to the caller personally. If it does, we then advise them to seek counsel of their own personal attorney and explain that we are the Corporation's attorney. We stress that this is in their interest as well because anything they tell us can and will be construed as a waiver of the attorney-client privilege. Defining this is critical in order to maintain our effectiveness as attorney for the Corporation.

Most notably, this past year, CLF attorneys, Frank Coppler and Joshua Howard have acted as personnel hearing officers for the City of Albuquerque. Frank Coppler has presided over numerous personnel actions and has issued findings of fact and conclusions of law recommendations to the City's Personnel Board in a variety of cases from suspensions to terminations. During this time Mr. Coppler has dealt with *pro se* grievants and those represented by counsel. Joshua Howard has also presided over numerous personnel actions, some of which are currently on-going, and issued findings of fact and conclusions of law to the City's Personnel Board. Additionally, Mr. Howard has functioned as a secondary hearing officer for the City of Albuquerque's new "Automated Speed Enforcement," for those wishing to challenge the citations they received. In that capacity Mr. Howard has presided over several all-day dockets ruling on the liability of those drivers, as well as functioned as a fill-in as needed.

Frank R. Coppler

Frank Coppler will be available to serve as hearing officer, particularly on those cases involving special significance or complexity. Frank Coppler, founder, and senior shareholder has been engaged in the practice of law in New Mexico for almost 50 years with a heavy emphasis on representing New Mexico municipalities. Over his long and distinguished career, he has represented too many municipalities and has been involved in too many personnel actions to recount. Prior to entering private practice, Mr. Coppler was assistant City Attorney for the City of Albuquerque. Since entering private practice in the 1970's, Mr. Coppler has represented or advised at least the following municipalities: Angel Fire (including its incorporation), Chama, Corrales, Edgewood, Espanola, Jemez Springs, Kirtland (including its incorporation), Las Vegas, Red River (including its incorporation), Rio Rancho, Springer, Sunland Park, Tijeras, and Truth or Consequences. He has served as City Attorney for the City of Santa Fe and as counsel for many other public entities such as regional councils of governments, water and sanitation districts, and counties. Mr. Coppler presently serves as general counsel for the City of Espanola. Most notably, as stated above, Mr. Coppler has served as a Personnel Hearing Officer for the City of Albuquerque for the past year. Mr. Coppler has presided over numerous personnel actions, drafted Findings of Act and Conclusions of Law, which have then been recommended to the Personnel Board. Mr. Coppler has experience in presiding over personnel actions where the grievant is represented by an attorney and where all parties are familiar with the proper procedures. Mr. Coppler also has experience presiding over personnel actions where the grievant is *pro se* without the assistance of counsel, a situation where the grievant is unfamiliar with proper procedures. As such, Mr. Coppler is prepared to oversee any personnel action he is requested to preside over. Mr. Coppler's resume is included herewith on pages 11 through 13.

John L. Appel

Mr. Appel is a senior associate at CLF with over 20 years at the firm during which time he has focused on municipal law. Recently, Mr. Appel completed a long tenure as Corrales Village Attorney during which time he remained Village Attorney through three changes in administration. After the most recent change in the office of Mayor, Village Administrator, and some council members, Corrales has chosen a new attorney. As an attorney focused on municipal law, Mr. Appel has represented or advised the following municipalities in all aspects of municipal law: Angel Fire, Chama, Corrales, Edgewood, Espanola, Kirtland, Las Vegas, Red River, Rio Rancho, Springer, Sunland Park, Tijeras, Village of Taos Ski Valley and Truth or Consequences. During his time representing these municipalities Mr. Appel has conducted various personnel hearings related to a variety of personnel issues. In the event that Mr. Frank Coppler, or Mr. Howard are unavailable, Mr. Appel will be able to fill and preside over hearings, as necessary. Mr. Appel's resume is included herewith on pages 16 through 17.

Gerald A. Coppler

Mr. Gerald Coppler is a shareholder of CLF and has practiced there since 1993. His practice has always emphasized public sector law. Since 1993, Mr. Coppler has been actively involved in providing legal services, including general legal advice, drafting of ordinances and resolutions, issuance of general obligation and revenue bonds, compliance with federal and state law, a variety of personnel matters, planning and zoning issues, and many other matters for a number of municipalities including the City of Espanola, Town of Red River, City of Truth or Consequences, City of Sunland Park, Town of Springer, Village of Corrales, El Prado Water & Sanitation District, Anthony Water & Sanitation District, Alto Lakes Water and Sanitation District, and numerous other public entities. He has appeared on behalf of these public agencies, in litigation and other matters, in the United States District Court for the District of New Mexico and district courts for many New Mexico counties. In addition, he has appeared at hearings before the New Mexico State Engineer and the New Mexico Public Regulation Commission. He has been a regular participant, upon the request of clients, at meetings of municipal governing bodies, municipal planning and zoning commissions, and the boards of directors of other quasi-municipal agencies. Mr. Coppler has represented or advised the following municipalities in all aspects of municipal law and personnel matters: Angel Fire, Aztec, Corrales, Edgewood, Espanola, Jemez Springs, Red River, Springer, Sunland Park, Tijeras, and Truth or Consequences. In the event Mr. Frank Coppler, or Mr. Howard are unavailable, Mr. Gerald Coppler will be able to fill in and preside over hearings, as necessary. Mr. Gerald Coppler's resume is included herewith on pages 14 through 15.

Joshua D. Howard

Mr. Howard is an associate attorney at CLF and has been practicing there since passing the New Mexico bar exam in July of 2016. Mr. Howard began as a municipal prosecutor for the municipalities of Espanola and Corrales. During the two years he served as prosecutor, Mr. Howard appeared in court at least twice a week and prosecuted hundreds of cases with an emphasis on DUI's, including appeals to the district court. Mr. Howard also assists Gerald Coppler in his defense of civil lawsuits filed in state and federal court against various public-school districts across the state of New Mexico. In that work Mr. Howard drafts and files, a variety of pleadings, prepares, issues, and answers written discovery, conducts legal research, writes miscellaneous briefs, and motions, takes, and defends depositions and appears in court for hearings. Mr. Howard also assists Frank Coppler with his work as general counsel for the City of Espanola, including a variety of legal research, attending, and advising the City during its weekly meetings and bringing suits on behalf of the City and defending those brought against the City. Of most relevance, after five years of active practice as an attorney Mr. Howard began acting as a personnel hearing officer for the City of Albuquerque. In that capacity Mr. Howard has presided over a multitude of

hearings on employment actions, including the issuance of many Decisions to City of Albuquerque's Personnel Hearing Board. Mr. Howard is currently engaged in these personnel actions for the City of Albuquerque. Additionally, Mr. Howard has served as an alternate hearing officer over the City of Albuquerque's new Automated Speed Enforcement program. There, Mr. Howard has functioned as an alternate hearing officer when necessary and has presided over several day long dockets consisting of 30-40 respondents wanting to challenge the citations they have received. In that capacity Mr. Howard makes the determination on liability after a presentation of evidence by both parties. Mr. Howard's resume is included herewith on pages 18 through 28.

2.1.2.3 Past Experience.

In addition to the experience gained by CLF attorneys, Frank Coppler and Joshua Howard during their years of service as personnel hearing officers for the City of Albuquerque, CLF has represented numerous municipalities and governmental entities as general counsel over the past 40 years. In that capacity the firm's attorneys have participated in 100's of personnel hearings advising both governmental bodies and hearing officers. The firm is intimately familiar with the law involving governmental employees and personnel matters and combined with its extensive experience in personnel hearings, is imminently qualified to function as personnel hearing officer to serve pursuant to the contract to be awarded. A few examples of our participation and representation in personnel hearings follow.

Town of Edgewood – Termination of Police Officer

In July of 2024, as contract counsel for the Town of Edgewood (the "Town"), CLF was tasked with advising the Town regarding the termination of a police officer and the Officer's subsequent appeal of the Town's action. A personnel hearing was held on July 9, 2024, where the Officer was provided with his due process rights. To ensure compliance with all relevant law, CLF drafted a script for the personnel hearing to assist the Town's Mayor throughout the process. The script was incredibly detailed, listing out each step which the Town must take to ensure the Officer was afforded all his due process rights. The script was specifically tailored to ensure that the Town's decision to terminate the Officer would be legally sound should the Officer decide to appeal the Town's decision. The Town's Mayor followed the script CLF drafted for him and the was successfully able to conduct the hearing and ensure the Officer was provided all of his rights, protecting the Town from future legal action regarding this termination.

Anthony Water & Sanitation District Office Manager/Hostile Work Environment

CLF has served as General Counsel to the Anthony Water & Sanitation District ("AWSD") since its formation. Regarding personnel issues, CLF advised AWSD on a complex set of facts involving a long-time employee, the Office Manager, regarding her misappropriation of cash and improper workplace behavior, which caused a hostile work environment for all. CLF guided AWSD Superintendent, Jose Terrones, as he relied on the personnel ordinance that was in place at the

time to guarantee due process for all parties that were involved, which included the Office Manager in question and those employees of AWSD which she harassed during her tenure. CLF advised AWSD on how to successfully set up an administrative investigation and a subsequent hearing, all of which was successfully done “in-house.” The facts presented in this situation created a tricky situation as AWSD risked being sued by their staff if they felt they were being retaliated against, in addition to a potential suit by the Office Manager. As such, CLF advised AWSD on the drafting of a letter which was sent to the Office Manager and recited the facts, background and procedures which was used in the background investigation by Mr. Terrones and the subsequent administrative hearing. After the administrative hearing, the Office Manager resigned, “voluntarily.” CLF’s successful handling of the Office Manager was the basis of CLF’s advice to AWSD on personnel issues going forward. That work was completed in 2015¹. Subsequently, two and a half years ago, AWSD had another personnel action that involved lower-level employees bringing forth claims of unequal treatment, sexual harassment, and hostile work environment by a supervisor. CLF advised AWSD to document these claims and conduct an administrative hearing. Using the prior knowledge and legal advice given by CLF to AWSD in the case of the Office Manager, AWSD conducted a full personnel hearing for the Supervisor. After the hearing was concluded, AWSD found there was cause to terminate the Supervisor. To this date there has been no appeal by the terminated employee. Please see letter of reference regarding the work provided herewith on pages 21 through 22.

Village of Angel Fire Dismissal of Public Works Director

CLF is the contract Village Attorney for the Village of Angel fire and represented The Village with respect to its termination of its former Public Works Director. The Director was a 20-year Village employee which included four years as the Village Manager after having been demoted to public works director by the current Village Manager. Relying on his knowledge of and access to Village personnel ordinances and procedures, the Director engaged in a pattern and practice of undermining the new Village Manager. The new Village Manager terminated him and then he appealed his termination under the Village’s personnel ordinance. A hearing on the termination was held by a contract hearing officer. CLF advised the Village Manager with respect to his presentation on the Director’s termination. CLF then provided the findings of fact and conclusions of law in support of the hearing officer’s recommendation. The Village Council upheld the termination of the Director. This work was completed in July 2020. Please see letter of reference regarding the work provided herewith on page 23.

¹ CLF acknowledges the Proposal Format states that the services must be performed in the past three to five years. CLF provides this example of earlier work experience to demonstrate that the client relied on CLF’s advice regarding personnel actions in a later more relevant personnel action.

City of Truth or Consequences Termination of Police Officer

CLF represented the City Administration of the City of Truth or Consequences (“T or C”) in the administrative appeal of a patrol officer, who was terminated for actions contrary to the City’s personnel code and the police department procedure manual (including assault, battery, and harassment of civilians). The City retained an outside hearing officer because there was no sitting personnel board to hear the appeal. CLF’s role was as an advocate for the City. The appeal hearing in September 2020 ended up taking almost two full days, conducted by Zoom with the hearing officer in Albuquerque and the witnesses coming individually to the City Manager’s conference room in T or C to testify. CLF was in Santa Fe; counsel for the Officer was with his client at counsel’s office in T or C. During the hearing CLF called a half dozen witnesses, including the Officer’s ex-girlfriend, her parents, independent citizens, and the Police Chief and Deputy Chief. The Officer called four witnesses and chose to testify on his own behalf. Exhibits were shared in advance, but formally introduced, offered, and admitted (or denied based on valid evidentiary objections) at the hearing because opposing counsel would not stipulate to admissibility. At close of the hearing, each party submitted a closing brief—CLF’s was some twenty pages long and included specific proposed findings of fact and conclusions of law, which were in large part, but not entirely, adopted by the hearing officer. The decision was in favor of the City administration, the Officer did not appeal further and the time for a district court appeal has passed. This work was completed at the end of 2020. Please see letters of reference regarding the work provided herewith on pages 24 through 26.

2.1.4 Management Summary

All work will be done in-house, no subcontractors other than the use of outside vendors for such matters as bulk printing or preparation of specialized exhibits, neither of which is contemplated. CLF individual staff with responsibility for interface will be the CLF attorney responsible for a given assignment under a referral from the City of Albuquerque. That individual will be responsible for interface with all City staff contacting CLF. Any CLF attorney assigned a personnel or other matter for the City of Albuquerque will use all resources necessary to successfully complete the assignment, such as, but not limited to, consultation with other CLF attorneys on any issues that arise and legal research via LexisNexis, or other sources.

2.1.5 Submissions:

2.1.5.1 Writing Sample:

Provided herewith as a writing sample, is a sample Findings of Fact and Conclusions of Law, which CLF drafted on behalf of the Village of Tijeras Town

Council regarding a personnel matter. Per the instructions, this writing sample has been uploaded separately.

2.1.5.2 Statement of Qualifications:

CLF is an active New Mexico professional corporation in good standing with the New Mexico Secretary of State's Office. All lawyers in the firm are presently licensed to practice law in the State of New Mexico and are in good standing with the State Bar of New Mexico. All attorneys who will adjudicate hearings have a minimum of five years of actual working experience and understand administrative law. Should CLF be awarded this proposal, it shall remain licensed to practice law in the State of New Mexico and shall remain in good standing with the New Mexico State Bar during the term of the contract awarded under this RFP. Additionally, should CLF be awarded this proposal, it shall abide by the Code of Judicial Conduct Rules 21-001, et. seq., NMRA 1998, as current and subsequently amended.

/s/ Frank R. Coppler

2.1.5.3 Certificate of Good Standing:

Please find Certificates of Good Standing for CLF and its attorneys included herewith on pages 27 through 31.

2.2 Cost Proposal Format, Section Two

2.2.1 Total Cost

CLF agrees to the flat hourly rate for providing services as City of Albuquerque's Personnel Hearing Officer based on the categories contained on page 15 of the Proposal.

/s/ Frank R. Coppler

2.2.2 Appendix A- Cost

CLF agrees to submit signed Appendix A in agreement to the City's fees.

/s/ Frank R. Coppler

2.2.3 Offerors should show detailed costs

CLF agrees to show detailed costs by task and number of hours dedicated to each task as listed in the specifications.

/s/ Frank R. Coppler

2.2.4. All Costs

CLF agrees that all costs to be incurred and billed to the City will be described by CLF for each item. All costs will include any applicable gross receipts taxes. CLF understands that the City will not pay for any amounts not included in the cost Proposal and that liability for items not included remains with CLF.

/s/ Frank R. Coppler

FRANK R. COPPLER
Attorney at Law
645 Don Gaspar Avenue
Santa Fe, New Mexico 87505
(505) 988-5656

EDUCATION

Valley High School, Albuquerque, New Mexico High School Diploma	1959
University of New Mexico, Albuquerque BA Education	1965
University of New Mexico School of Law JD	1968
Admitted to Practice - State of New Mexico	1969

PROFESSIONAL EXPERIENCE

July 1968 to July 1970 - Assistant City Attorney City of Albuquerque

Regular case load of an assistant City Attorney.

Lobbied for the City full time in the 1969 Constitutional Convention and 1970 Legislative Session.

July 1970 to September 1975 - Staff Attorney and Executive Director, New Mexico Municipal League

Steadily increasing municipal success in the Legislature was the high point of the four-year tenure. In 1970, the League passed six major bills affecting cities; twenty major bills were passed in 1975. Included was the first recognition by the Legislature of municipal funding problems. At League urging, the Legislature in 1974 and 1975 provided a substantial direct appropriation and home rule authority to levy additional taxes without voter approval.

September 1975 to Present - LOBBYING

Major accomplishments: 1985 and 1986 sessions drafted the Public Schools Insurance Authority Act, §22-29-1 through 11. Secured sponsors and successfully passed the legislation involving a comprehensive overhaul of the practices of public schools in administering, purchasing coverages and accounting for all risk coverages (property, casualty and workman's compensation) as well as all benefits coverages for the school districts (other than APS) and all charter schools. Several other states have used this Act as a template in crafting their state public school pools because of the demonstrated success in maintaining stable rates in New Mexico over the last 22 years. This effort involved bringing together such diverse groups as the educators associations and unions, the school boards and the superintendents and overcoming the heated resistance of the independent insurance agents and brokers.

In the 1988 and 1989 sessions drafted the Retiree Health Care Act. Secured sponsors (Billy McHibben and Ben Lujan) representative of all political ideologies and successfully

passed the legislation involving a comprehensive overhaul of how we, as a society, account for the future costs of health care for retired public employees. Now the naysayers improperly criticize the Act because of funding shortfalls. If we had not passed it the unfunded future obligations would still be unknown and when the train jumps the track in 2025 there would have been no preliminary discussion or preparation for meeting the issue. I remain proud of the fact that I pushed the Act to passage.

Otherwise, in every session I have been very active. In the 2007 and 2009 sessions, passed bills giving Water & Sanitation Districts authority for local option gross receipts tax and removed them from PRC jurisdiction over rates, placing that authority with the local elected officials.

September 1975 to Present - PRIVATE PRACTICE As senior shareholder in the firm now practicing as Coppler Law Firm, P.C. The law firm has represented and continues to represent a broad spectrum of clients. During the period of 1975 to 1985, Coppler negotiated on behalf of public employers approximately fifty master labor agreements covering thousands of public employees in New Mexico. Not one hour of employee time was lost due to strike, slowdown, lockout, or other concerted action during negotiation of those documents.

For five years (1978-83) the firm represented the City of Santa Fe, which was completely self-insured in Workmen's Compensation, general liability, and employee medical and health. The record of Santa Fe in this pioneering program was used as a model throughout the country.

The firm is also counsel to approximately a dozen cities, towns, villages, special districts and mutual domestic water and wastewater associations throughout New Mexico. It is also special counsel to municipalities and several other public entities. The firm provided the professional services in the successful incorporations of Edgewood, Sunland Park, Corrales, Red River, Angel Fire, Taos Ski Valley, and Anthony as well as creation of Valley, Alto Lakes and Anthony Water and Sanitation Districts.

The firm has served as general counsel for many municipalities, representing municipalities in civil cases in the State district courts, Court of Appeals, and New Mexico Supreme Court, and in the U.S. District Court for the District of New Mexico and the Tenth Circuit Court of Appeals of the United States. The firm has also served as prosecutor for several municipalities, handling criminal cases in the municipal courts of Española, Corrales, Red River, and Truth or Consequences and in appeals to the State district courts from judgments rendered in those municipal courts.

The firm represents several domestic water associations and, in that capacity, has performed legal work on Farmers Home Administration Loans and Grants.

For several years the firm served as closing counsel for the New Mexico Finance Authority, closing more than 250 loans and grants to local governmental entities for water and wastewater projects.

2022- Present. Service as a personnel hearing officer for the City of Albuquerque. Duties include presiding over numerous administrative hearings on the merits (some of which lasted several days), all pre-hearing conferences, and the issuance of findings of fact and conclusions of law to the Personnel Board for the City at the close of said hearings on the merits. These hearings consisted of grievants both represented by legal counsel and those *pro se*.

2024-Present. General Counsel for the City of Espanola. Serving the City of Espanola through any legal services necessary. Whether it be prosecuting or defending lawsuits on behalf of the City, advising the Mayor on legal issues, attending City Council meetings or addressing any other legal matter.

GERALD A. COPPLER
COPPLER LAW FIRM, PC
645 DON GASPAR AVENUE
SANTA FE, NEW MEXICO 87505
(505) 988-5656
INTERNET ADDRESS: gcoppler@coppler.com

Experience

1993 - Present

Coppler Law Firm, P.C.

Santa Fe, New Mexico

Associate, 1/93-5/95

Shareholder, 5/95 - present

School Law: torts and civil rights defense, special education administrative appeals and damages action defense, employment matters, and other litigation.

Municipal Law: zoning, eminent domain (annexation, condemnation and regulatory takings), miscellaneous land use and regulatory matters, employment/labor law, legislative drafting (ordinances, resolutions & statutes), contracts (including joint powers agreements and anti-donation clause questions), municipal bonds and R.U.S. loans/grants (including due diligence), and advice to governing bodies in all areas.

Corporate Law: employment/labor law and employee-employer relations, commercial leases (including PCS tower leases), purchase agreements, contracts, negotiation, and bonds (including purchaser's due diligence).

Public Law: insurance, contracts, negotiation, coverage issues, and litigation.

Litigation: litigation of numerous cases in the trial and appellate courts of New Mexico, Texas, and the United States District Court (DNM), as well as before New Mexico administrative bodies including the Public Regulation Commission, the Office of the State Engineer, the Taxation & Revenue Department, and various local administrative bodies.

1990-1992

First Judicial District Attorney's Office

Santa Fe, New Mexico

Assistant District Attorney

Misdemeanor and felony prosecutor. One of two attorneys assigned to felony prosecutions for Rio Arriba and Los Alamos Counties. Tried approximately 30 jury trials including four, first degree murder cases.

1989

City of San Diego

San Diego, California

Legal Intern

Performed legal research and drafted legal memoranda, pleadings and motions. Prosecuted misdemeanors in the San Diego Municipal Court.

1987-1988

Edwards, White & Sooy

San Diego, California
Law Clerk

Insurance defense law clerk. Performed legal research and drafted legal memoranda, pleadings, motions, and discovery requests.

Education

University of Phoenix
Albuquerque, New Mexico
Master of Business Administration, 2001

California Western School of Law
San Diego, California
Juris Doctor, 1990

Awards and Activities:

- Advocacy Honors Board - Member (1988-1989)
- Advocacy Honors Board - Director (1989)
- Sophistry Program - Sophister (Spring 1989)
- Sophistry Program - Chief Sophister (Summer 1989)

University of New Mexico
Albuquerque, New Mexico
Bachelor of Arts, 1987 (English)

Bar Admissions

- State of New Mexico, May 9, 1990
- United States District Court (N. Mex.), October 24, 1990
- United States Court of Appeals (10th Cir.), March 23, 1992
- State of Texas, July 13, 1995
- United States District Court (W. Dist. Tex.), January 12, 1996
- United States Supreme Court, March 17, 1997

John L. Appel
Coppler Law Firm, PC
645 Don Gaspar Avenue
Santa Fe, New Mexico 87505
(505) 988-5656
E-MAIL ADDRESS: jappel@coppler.com

Résumé

Education:

- J.D. *cum laude*, University of New Mexico School of Law: May 1998.
Faculty Award, 1998. Dean's Award, 1998. Order of the Coif
- M.S., Earth & Planetary Sciences, University of New Mexico: July 1995
- B.S., Geology, with distinction, University of New Mexico: May 1981
- M.A., English, University of New Mexico: May 1975
- B.A., English, University of New Mexico: June 1968

Professional Affiliations and Certifications:

- Member, New Mexico Bar, #10481
- Member, Federal Bar, U.S. District Court for the District of New Mexico
- Member, Geological Society of America
- Member, New Mexico Geological Society

Partial List of Professional and Work Experience:

- **Associate Attorney, Coppler Law Firm, P.C., Santa Fe, New Mexico:** August 1998 – present. Attorney in general civil practice, including primarily municipal law, public finance, water law, utility law, insurance defense, and misdemeanor prosecutions in municipal courts.
- **Legal Research, Writing and Advocacy Tutor**, University of New Mexico School of Law, Albuquerque, New Mexico: August-December 1996; August 1997-April 1998. Assistance to first-year law students in preparation of writing and advocacy assignments.
- **Legal Intern**, New Mexico State Land Office, Santa Fe, New Mexico: June-August 1996; continued as a part-time contractor through May 1998. Legal research and writing.
- **Environmental Compliance Coordinator**, City of Albuquerque, Parks & General Services Dept., Albuquerque, New Mexico: May 1993-August 1995, Regulatory compliance and facilities development for underground and above-ground fuel storage tanks and refueling stations.
- **Environmental Scientist**, Benchmark Environmental Corporation, Albuquerque, New Mexico: August 1992-May 1993. Regulatory compliance involving primarily federal energy and research facilities.
- **Environmental Scientist**, City of Albuquerque, Environmental Health Dept., Albuquerque, New Mexico: November 1991-July 1992. Regulatory oversight involving

leaking underground storage tanks and remediation of soil and groundwater contamination.

- **President and Senior Hydrogeologist**, Monteverde Environmental Consultants, Albuquerque, New Mexico: April-September 1991. Environmental compliance for underground storage tanks, water quality, and site investigation and remediation activities.
- **Proprietor and Senior Hydrogeologist**, Carson Geologic Services, Carson, New Mexico: January 1990-March 1991. Environmental compliance involving underground storage tanks, site investigation and remediation, and water quality issues.
- **Senior Hydrogeologist**, Mariah Associates, Albuquerque, New Mexico: August 1989-January 1990. Environmental compliance and organizational development.
- **Hydrogeologist, Senior Hydrogeologist**, Geoscience Consultants Ltd., Albuquerque, New Mexico: January 1987-July 1989. Environmental compliance involving RCRA, CERCLA, and leaking underground storage tank sites; regional water quality and geologic investigations; project and personnel management.
- **Technical Editor (part-time)**, U.S. Geological Survey, Water Resources Division, Albuquerque, New Mexico: May 1979-May 1981. Editing of text, figures and tables in official U.S. Geological Survey reports.
- **Air Traffic Controller**, Albuquerque Air Route Traffic Control Center, Albuquerque, New Mexico: July 1975-January 1979; June 1982-June 1987.

Community and Professional Involvement:

Board member and president, North Campus Neighborhood Association (Albuquerque, N.M.), 1995-1997

President, District 5 Coalition of Neighborhood Associations (Albuquerque, N.M.), 1996-1997

Joshua D. Howard

941 Calle Mejia Apt # 806, Santa Fe, NM 87501
Tel.: (714) 651- 4664, Email: jhoward@coppler.com

Education

University of California, Santa Barbara

Santa Barbara, CA

9/08- 6/12. B.A. in Philosophy.

- Overall GPA: 3.2
- Emphasis in Ethics and Public policy, designed for students who intend to pursue careers in law or government.
- Minor: Spanish

University of Idaho, College of Law

Moscow, ID

9/13-5/16. Juris Doctor (J.D.)

- Overall GPA: 3.1
- Passed the New Mexico State Bar Examination in July 2016 on the first attempt.

Work Experience

Coppler Law Firm

Santa Fe, NM

Present. Attorney (40 hrs./week)

- Defend civil lawsuits assigned to us by the New Mexico Public Schools Insurance Authority ("NMPSIA") filed in state and federal court against various public schools in New Mexico. Duties include: drafting and filing pleadings, preparing, and answering discovery, conducting legal research, writing miscellaneous briefs and motions, taking, and defending depositions, conducting witness interviews and site inspections, and appearing in court for various hearings.
- Personnel hearing officer for the City of Albuquerque. Duties include: conducting all pre-trial hearings, ruling on all pre-trial issues as necessary and conducting hearings on the merits. After conducting hearings on the merits, Findings of Fact and Conclusions of Law are drafted and submitted to the Personnel Hearing Board for the City of Albuquerque.
- Secondary Automated Speed Enforcement Hearing Officer. Duties include: when main hearing officer is unavailable, provide services as a secondary hearing officer for the City of Albuquerque for their new Automated Speed Enforcement ("ASE") program and rule on the liability of drivers who have been issued citations and elect to contest the citation.
- Assist senior partner Frank Coppler with his work as general counsel for the City of Espanola. Duties include: conducting legal research, attending council meetings, advising the City Council, bringing suits on behalf of the City and defending suits brought against the City.

Past. Attorney (40 hrs./week)

- Municipal prosecutor for The City of Espanola and The Village of Corrales. Duties included: prosecuting all criminal cases with an emphasis on DUIs, filing all necessary pleadings in any given case, appear in municipal court at least twice a

week for hearings and trials, communicate with defense attorneys in attempt to seek pre-trial resolutions, and prosecute all appeals to the district court.

- Village attorney for the Village of Tijeras. Duties included: attending all Village council meetings and other special meetings as requested, advisement of the Village Council, conducting legal research on various topics facing the municipality, bringing suits on behalf of the Village, defending suits brought against the Village and navigating employment issues involving employees of the Village, among other various tasks as needed by the Village.

Intermountain Fair Housing Council

Boise, ID

1/16-5/16. Pro Bono Intern (5-10 hrs/week)

- Duties included helping the Fair Housing Council construct justiciable Fair Housing Act (FHA) claims on behalf of their clients.
- Went door to door at apartment complexes that were facing foreclosure in hopes of educating the tenants of their FHA rights.
- Conducted numerous in-office clinics, which were free to residents seeking legal advice.
- Performed a variety of legal research that dealt with bringing FHA claims, specifically researching the advent of disparate impact housing claims now being brought.
- Organized thousands of pages of files that were given in response to a public information request regarding the closing of a large homeless area in Boise known as "Cooper Court". These documents formed the basis of an FHA claim filed by the Intermountain Fair Housing Council.

Coppler Law Firm

Santa Fe, NM

7/12- 8/14. Legal Intern. (40 hrs/week)

- Minor legal work including legal briefs and basic legal research.
- Held this job every summer since graduation from high school in 2008.

UCSB Annual Fund

Santa Barbara, CA

1/11- 6/11. Student Caller. (15 hrs/week)

- Worked as a student caller for the Annual Fund, an organization on campus that uses student callers to solicit support from alumni and parents to sustain on campus programs that would otherwise be devoid of funding.
- Helped in further improving my communication skills by having me cold-call potential donors over the telephone.

Cuesta Construction

Newport Beach, CA

6/08- 9/08. General Laborer. (40 hrs/week).

- Learned a variety of basic construction skills in addition to the realities of a 40-hour work week consisting of manual labor.
- Substantially developed my ability to communicate with others in Spanish, allowing me to apply what I learned in the classroom to real life scenarios in a work environment.

Achievements

Highly Proficient in three languages

- My best friend today is deaf and upon meeting him I began teaching myself sign language. I possess an intermediate proficiency in sign and would be able to communicate with anyone who is hearing impaired.
- Received a minor in Spanish while in college and currently possess advanced writing ability and intermediate speaking ability.

**ANTHONY WATER & SANITATION DISTRICT**

P.O. BOX 1751 • ANTHONY, NEW MEXICO 88021 • (575) 882-3922

January 3, 2023

Procurement Officer
City of Albuquerque
1 Civic Plaza
Albuquerque, NM 87102

Good day:

Coppler Law firm (CLF) has been General Counsel to our quasi-municipal corporation since 1978 when we were formed. They have requested we provide the city of Albuquerque a narrative outlining CLF's legal services in the area of personnel, administration of a merit system of public employment and the processes, rules, and regulations within which the public employer/employee relationship must be conducted. For background, prior to my employment as superintendent of the municipal water/wastewater system my experience was as a civil engineer in the private sector although I did civil engineering consulting with municipal governments.

Because of my background, shortly after becoming superintendent, I relied exclusively on CLF's expertise in my being confronted with a very complicated set of facts involving the then senior employee, the office manager who had been with us since 1978. She had complete control of the office staff most of which were engaged in collecting cash at the window, accounting for it and seeing that the cash was deposited daily. Our being a border community many if not most of our customers come monthly to the office paying cash for our municipal services.

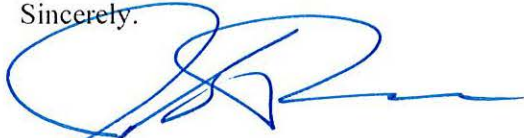
In summary, shortly after my employment as superintendent, I was faced with staff allegations against the office manager alleging misappropriation of cash, bullying, harassment and maintaining a hostile work environment. Underlying those claims were allegations by them of the office managers misappropriation of cash, cash proceeds paid by customers at the window. CLF's expertise in guiding me through the personnel ordinance, particularly all the processes applicable to an investigation, rules and regulations or procedures required to be followed in guaranteeing due process for both the complaining staff and the office manager was both timely and completely correct. Without that advice this matter had all the earmarks of exploding into a situation where not only would we be faced by potential lawsuits by a former office manager with all the complications that entails, but by potential lawsuits by lower-level employees who had been clearly abused.

CLF advised that after going through a process of administrative notice and opportunity to be heard as advised by CLF, separation of employment of the office manager would, not only be supported by a preponderance of the evidence against the former office manager, but be the best way to avoid lawsuits by the staff. CLF advised with respect to all the rules involving notice and opportunity to be heard and advised with regard to setting up an administrative hearing process which I did. Due to CLF's excellent advice, I was able to accomplish this by conducting an "in-house" administrative investigation

culminating in an in house hearing that I conducted with the office manager in a setting where the staff were not forced into an adversary confrontation with their former boss, the office manager. CLF advised that if at all possible that should be avoided because it could be construed as retaliation against them, the lower-level employees, many of which only spoke English as a second language! The advice on how to proceed successfully to accomplish this was provided by CLF. CLF provided in the form of a letter to the office manager, an excellent recitation of the facts, background and procedures which I used in conducting an in-house administrative hearing that proved to protect us from any future lawsuit. Fortunately after the "in house" hearing conducted by me pursuant to CLF's advice, the office manager resigned "voluntarily", the lower-level staff being greatly relieved by the result.

Building on the knowledge I learned through the above proceedings, when confronted last year with a situation where our lower-level field employees came forth with allegations of unequal treatment, sexual harassment and hostile work environment by our long-term field supervisor, following CLF's advice I documented the claims which I found to be credible and conducted another "in-house" hearing based on the procedures I had earlier acquired from CLF's expertise. Fortunately the long-term supervisor chose, despite facts to the contrary, to deny all the allegations and instead accuse what were then obviously his victims of mistreating him! Pursuant to CLF's advice I concluded that this provided adequate cause for me, after gathering all these facts, giving the long-term supervisor a full hearing and opportunity to proceed formally, to terminate him. I did so and to date there has not been any indications of an appeal by him of my decision resulting from following the administrative process advised by CLF.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jose Terrones', with a long horizontal flourish extending to the right.

Jose Terrones
Superintendent
Anthony Water &
Sanitation District



City of Albuquerque
1 Civic Plaza
Albuquerque, NM 87102

To whom it may concern:

Mr. Frank Coppler of Coppler Law Firm (CLF) requested I provide a recommendation in the form of a narrative regarding CLF's performance in advising the village regarding personnel matters. CLF is the contract village attorney for the Village of Angel Fire and represented the village with respect to the termination of its former Public Works Director.

It should have been a fairly straightforward dismissal based upon the employee's repeated steadfast refusal to take direction from our then, Village Manager. However, because of his 20-year tenure as a village employee (including a few years as Village Manager) he used, to his advantage, every loophole available to obfuscate and end run the process.

The employee, after having not been renamed as Village Manager, instead reassigned to Public Works Director, was terminated for insubordination and failure to perform the duties as outlined in the job description. Relying on his knowledge of and access to village personnel ordinances and procedures as well as his ability to influence long time village employees in his favor, the employee engaged in a pattern and practice of undermining the Village Manager.

The Village Manager terminated him and then he appealed his termination under the village personnel ordinance. Pursuant to CLF's advice, following the village personnel ordinance, an outside hearing officer was obtained and that hearing officer conducted a hearing with respect to the termination. CLF in the administrative hearing, represented and advised the Village Manager, guiding him with respect to putting on his case. CLF then provided a very thorough set of 80 findings of fact and 25 conclusions of law. The hearing officer, adopting most of the village's findings of fact and conclusions of law, upheld the termination of the employee.

The Village Council upheld the termination. CLF's advice proved invaluable in defense of a subsequent lawsuit for damages which was settled for nuisance value, a settlement with which I did not agree, however, in reality the settlement was probably for less than what it would've cost to try the case.

Sincerely,

A handwritten signature in blue ink that reads "Jo Mixon".

Jo Mixon
Mayor
Village of Angel Fire

Amanda Forrister
Mayor

Rolf Hechler
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.org

Destiny Mitchell
Commissioner

Shelly Harrelson
Commissioner

Bruce Swingle
City Manager

January 3, 2023

City of Albuquerque
1 Civic Plaza
Albuquerque, NM 87102

RE: Coppler Law firm

To whom it may concern:

I am now and was city of Truth or Consequences manager. I terminated both deputy chief of police Erica Baker and Detective Michael Lansford from their police department positions, thus ending a long festering problem that had not been adequately addressed. Detective Lansford had filed a grievance against deputy chief Baker, both for her high-handedness as a supervisor (the chief had removed her from the direct chain of command over Detective Lansford because they did not get along), and because deputy chief Baker had gone through the Sierra County Sheriff's office (where her husband worked) to lodge a complaint that Lansford was illegally "double dipping" by having come back to work part-time after getting PERA retirement. Baker, then in turn, filed complaints against Lansford with the city, alleging the double dipping, insubordination, and general incompetence. She advised the district attorney that Lansford was not qualified to serve as an officer, and as a consequence a number of drug cases in which Lansford was involved were apparently dropped by the DA.

On Baker's complaint, the city hearing process was set up in accordance with the city's then existing personnel code (rewritten during the course of the hearing but the rewrite had no effect on the proceedings). Jaime Rubin, General Counsel to the city advised the city commission, John Appel of the Coppler Law firm advised me and represented the city in a zoom administrative hearing conducted by T. Zane Reeves. I appeared as the city's primary witness and per CLF's suggestion supported and readopted my previous documentary record. The hearing officer concluded that the city had made its case for disciplinary action against Ms. Baker but found dismissal excessively harsh and recommended Baker be reinstated but "busted" in rank to a lower position. After reviewing the recommendation, I determined not to accept it because it would effectively place an employee back on the payroll with a grudge against the city and a sense of immunity from disciplinary action, this because our police force is too small to simply create an extra position not needed in the normal course of staff. Baker appealed the decision to the federal court and it is being defended by the insurance company.

I found that CLF's work in this case on behalf of the city was at once timely, professional and accurate.

Thank you,

Bruce Swingle
City Manager

JAIME F. RUBIN, LLC
ATTORNEY AT LAW
P.O. DRAWER 151
TRUTH OR CONSEQUENCES, NEW MEXICO 87901
TELEPHONE: 575.894.3031
FAX: 575.894.3282

January 3, 2023

City of Albuquerque
1 Civic Plaza
Albuquerque, N.M.

RE: Coppler Law Firm Letter of Reference

To whom it may concern:

I have been requested to provide a statement with regard to the performance of Coppler Law Firm (CLF) for the City of Truth or Consequences in the area of personnel matters. CLF represented the city administration of the City of Truth or Consequences in an administrative appeal of a patrol officer. As City Attorney I represented and advised the City Commission in the matter. The officer was terminated for actions contrary to the city's personnel ordinance and the police department procedure manual, including assault, battery, and harassment of civilians.

The city retained an outside hearing officer because there was no sitting personnel board to hear the appeal. CLF's role was as advocate for the city. The appeal hearing in September 2020 lasted almost 2 full days. It was conducted by Zoom with the hearing officer in Albuquerque and the witnesses coming individually to the city manager's conference room in T or C to testify. During the hearing, CLF was located in Santa Fe and counsel for the officer and the officer at counsel's office in T or C.

During the hearing CLF called a half-dozen witnesses-including the officer's ex-girlfriend, her parents, and independent citizens as well as the police chief and deputy chief. The officer called three or four witnesses and testified on his own behalf. In advance, exhibits were exchanged, then offered and admitted (or not), as determined by the hearing officer. At close of the hearing, each party submitted a closing brief-CLF's being approximately 20 pages long. It included specific proposed findings of fact and conclusions of law, in large part but not entirely, adopted by the hearing officer. Fortunately the hearing officer decided the case in favor of the city administration.

CLF's advice that by using this mechanism it forced the officer to put on his case in a timely manner, not allowing witnesses memories to fade and avoiding through passage of time witnesses no longer being available, proved excellent. Moreover CLF's advice to grant an administrative hearing with all the formalities of due process means that if appealed to District Court the District Court may not conduct a trial de novo. CLF advised that if such appeal were lodged, the District Court considerations would be confined to the administrative record made at the city level. CLF advised the city that under the state rules of procedure such an appeal would have to have been made 30 days after the decision was entered, more importantly that the District Court review would be limited to the administrative record. There was no appeal within

the 30-day time limit and with regard to any potential federal court claims CLF's advice provides the city with a powerful argument for dismissal since all the officers procedural guarantees were satisfied in this administrative hearing process.

In summary CLF has been contract legal counsel with the city of Truth or Consequences for many years. This is but one of many examples of CLF's representation of the city. The firm has excellent legal writers and have produced many well researched and compelling briefs, motions, arguments, findings of fact and conclusions of law.

Thank you



Jaime Rubin

Contract City Attorney

City of Truth or Consequences



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Certificate

STATE OF NEW MEXICO }
 } ss.
 SUPREME COURT }

I, ELIZABETH A. GARCIA, Chief Clerk of the Supreme Court of the State of New Mexico, hereby certify that, upon passing a written examination prescribed by the New Mexico Board of Bar Examiners, **JOHN L. APPEL** was admitted to practice law in the Supreme Court and other courts of the State of New Mexico on **October 8, 1998**, and has at all times since been and is now an active member of the Bar of said Supreme Court in good standing.

“Good standing” means that the attorney is current on payment of State Bar dues, has complied with Minimum Continuing Legal Education requirements, and is not presently under either administrative or disciplinary suspension. No disciplinary action involving professional misconduct has been taken against the attorney's law license. This certification expires 30 days from this date, unless sooner revoked or rendered invalid by operation of rule or law.



WITNESS, My official signature and the seal of said Court this 4th day of January, 2023.

Elizabeth A. Garcia
 Chief Clerk of the Supreme Court
 of the State of New Mexico

By: Zelda Abeita
 Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Certificate

STATE OF NEW MEXICO }
 } ss.
 SUPREME COURT }

I, ELIZABETH A. GARCIA, Chief Clerk of the Supreme Court of the State of New Mexico, hereby certify that, upon passing a written examination prescribed by the New Mexico Board of Bar Examiners, **FRANK R. COPPLER**, formerly known as **Francis Robert Coppler**, was admitted to practice law in the Supreme Court and other courts of the State of New Mexico on **April 3, 1969**, and has at all times since been and is now an active member of the Bar of said Supreme Court in good standing.

“Good standing” means that the attorney is current on payment of State Bar dues, has complied with Minimum Continuing Legal Education requirements, and is not presently under either administrative or disciplinary suspension. No disciplinary action involving professional misconduct has been taken against the attorney's law license. This certification expires 30 days from this date, unless sooner revoked or rendered invalid by operation of rule or law.



WITNESS, My official signature and the seal of said Court this 4th day of January, 2022.

Elizabeth A. Garcia

Chief Clerk of the Supreme Court
of the State of New Mexico

By: Zelda Abaita

Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Certificate

STATE OF NEW MEXICO }
 } ss.
 SUPREME COURT }

I, ELIZABETH A. GARCIA, Chief Clerk of the Supreme Court of the State of New Mexico, hereby certify that, upon passing a written examination prescribed by the New Mexico Board of Bar Examiners, **GERALD A. COPPLER** was admitted to practice law in the Supreme Court and other courts of the State of New Mexico on **May 9, 1990**, and has at all times since been and is now an active member of the Bar of said Supreme Court in good standing.

“Good standing” means that the attorney is current on payment of State Bar dues, has complied with Minimum Continuing Legal Education requirements, and is not presently under either administrative or disciplinary suspension. No disciplinary action involving professional misconduct has been taken against the attorney's law license. This certification expires 30 days from this date, unless sooner revoked or rendered invalid by operation of rule or law.



WITNESS, My official signature and the seal of said Court this 4th day of January, 2023.

Elizabeth A. Garcia
 Chief Clerk of the Supreme Court
 of the State of New Mexico

By: Zelda Abella
 Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Certificate

STATE OF NEW MEXICO }
 } ss.
 SUPREME COURT }

I, ELIZABETH A. GARCIA, Chief Clerk of the Supreme Court of the State of New Mexico, hereby certify that, upon passing a written examination prescribed by the New Mexico Board of Bar Examiners, **JOSHUA GRANSTROM-HOWARD** was admitted to practice law in the Supreme Court and other courts of the State of New Mexico on **February 7, 2017**, and has at all times since been and is now an active member of the Bar of said Supreme Court in good standing.

“Good standing” means that the attorney is current on payment of State Bar dues, has complied with Minimum Continuing Legal Education requirements, and is not presently under either administrative or disciplinary suspension. No disciplinary action involving professional misconduct has been taken against the attorney's law license. This certification expires 30 days from this date, unless sooner revoked or rendered invalid by operation of rule or law.



WITNESS, My official signature and the seal of said Court this 4th day of January, 2023.

Elizabeth A. Garcia
 Chief Clerk of the Supreme Court
 of the State of New Mexico

By: Zelda Abaita
 Deputy Clerk



STATE OF NEW MEXICO

MAGGIE TOULOUSE OLIVER

SECRETARY OF STATE

Certificate of Good Standing and Compliance

IT IS HEREBY CERTIFIED THAT:

COPPLER LAW FIRM, P.C.

1250679

the above named entity, a Corporation incorporated under the laws of New Mexico, is duly authorized to transact business in New Mexico as a Domestic Profit Professional Corporation, under the

Professional Corporation Act
Business Corporation Act

53-6-1 to 53-6-14 NMSA 1978
53-11-1 to 53-18-12 NMSA 1978

having filed its Articles of Incorporation on December 10, 1984, and Certificate of Incorporation issued as of said date.

It is further certified that the fees due to the Office of the Secretary of State which have been assessed against the above named entity have been paid to date and the entity is in good standing and duly authorized to transact business as its existence has not been revoked in New Mexico. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's financial condition or business activities and practices.

Certificate Issued: August 26, 2021

In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.



Maggie Toulouse Oliver

Maggie Toulouse Oliver
Secretary of State

Page 31

Certificate Validation #: 0055010

A certificate issued electronically from the New Mexico Secretary of State's office is immediately valid and effective. The validity of a certificate may be established by viewing the Certificate Validation option on the Business Filing System at <https://portal.sos.state.nm.us/bfs/online> and following the instructions displayed under Certificate Validation.

**VILLAGE OF TIJERAS NEW MEXICO
IN RE: TERMINATION OF DIANE KLAUS**

FINDINGS OF FACT & CONCLUSIONS OF LAW
DECISION OF THE VILLAGE COUNCIL

1. Mayor Chavez' appointment of Diane Klaus to the office of Village Clerk was rejected by the Village Council on September 18, 2017.
2. Mayor Chavez then designated Deputy Clerk Klaus as the acting Village Clerk.
3. Mayor Chavez, in defiance of the Council's termination of Klaus' position, continued Klaus on the Village payroll, again without the knowledge or approval of the Council.
4. Klaus Exhibit 2, and Klaus Exhibit 3 are the job descriptions of Deputy Clerk and Village Clerk/Treasurer and only with brief interruptions since September 18, 2017, Klaus has served as both.
5. The Village Council on the 3rd day of March did terminate Klaus.
6. Mayor Chavez, in defiance of the Council's termination of her position, continued Klaus on the Village payroll.
7. In a case entitled *Village of Tijeras and Village Council of Village of Tijeras Petitioners, v. Gloria Chavez, Mayor of Village of Tijeras, in her official capacity, Respondent v. Diane Klaus, Intervener in Interest* Case No. D-202-CV-2018-03132 the Village Council petitioned for an alternative writ of mandamus requesting that the Court order the Mayor to terminate Klaus.
8. On June 29, 2018, the District Court entered an order rejecting the Council's argument and finding that, "The authority to discharge an employee is provided only to the mayor and not to the council under sections 1, 2 and 16 of Ordinance No. 157, the village's personnel ordinance."
9. In July of 2019, the Council changed the Deputy Clerk position from hourly to salaried, increasing Klaus' annual pay from \$40,000 per year to \$65,000 per year, this also changed Klaus' employee status to "at-will," as classified within the Village's personnel ordinance No. 157.
10. Emboldened by their victory in the District Court, Chavez and Klaus continued the practice of hiding information from the Council by neglecting their duty to provide the Council with information regarding unbudgeted expenditures, namely the January 5, 2018 unlawful PERA reimbursement expenditure of \$64,523.65, including \$10,752.58 paid Klaus and \$8,707.99 paid Chavez, done without prior budget authority, which is in

violation of §3-12-3A NMSA 1978 and the Governmental Conduct Act Section 10-16-3(A-B). Bruton/Wismer Ex B - 4 at p. 72.

11. On January 6, 2018, Klaus co-signed the checks as acting Village Clerk, the highest appointed at-will employee of the Village.

12. The checks were co-signed by Klaus ostensibly under the authority of VOT Resolution 2006 and despite contrary advice by the Village attorney that said resolution was a cafeteria plan resolution, and was not relevant to issues surrounding potential PERA reimbursements and that before any checks were issued, PERA must approve and the Council must be advised.

13. Doing neither, Klaus and Mayor Chavez, on January 6, 2018, signed checks totaling \$64,423.65 to:

<u>Name of Recipient</u>	<u>Disbursement Date</u>	<u>Disbursement Amount</u>
Zanetta Abeyta	1/5/2018	\$6,075.08
Sonya Apodoca	1/5/2018	\$69.70
Jake Bruton	1/5/2018	\$1,888.59
Gloria Chavez	1/5/2018	\$8,707.99
Darlene Coleman	1/5/2018	\$3,944.72
Alexandra Edmo	1/5/2018	\$2,287.21
Cheyenne Herrera	1/5/2018	\$302.52
Flaviano Sanchez	1/5/2018	\$7,768.73
Meagan Sarricino	1/5/2018	\$903.72
Melvin Garcia	1/5/2018	\$18,867.75
Richard Hanna	1/5/2018	\$75.60
Diane Klaus	1/5/2018	\$10,752.58
Flori Silva	1/5/2018	\$2,779.46
Total		\$64,423.65

Bruton/Wismer Ex B – 5.

14. The only reimbursement check received by a Councilor, then Councilor Jake Bruton, was delivered in April of 2018. Bruton/Wismer Ex B – 4 at pg. 72.

15. In an April 16, 2018 e-mail message from the Village attorney to the governing body and acting Village Clerk, counsel for the Village stated that he spoke with the acting Village Clerk via telephone and advised that the PERA reimbursement issue was in the hands of PERA and she should follow their advice; acting Village Clerk informed counsel for the Village that she had discussions with state officials and had taken the matter in front of the Village Council for discussion and they voted to approve. In that meeting Ms.

Klaus was told to cease the PERA deductions, which she did not do, rather the improper checks continued to be issued.

16. The only person not cashing the check they received was then Councilor Jake Bruton and no one repaid the monies except for Chavez, who repaid the majority of the monies owed, doing so only during the run up to her failed campaign for reelection and a strong suggestion made by the State Auditor. Bruton/Wismer Ex b – 5 at page. 10.

17. Klaus as Village procurement manager in 2018 violated the Procurement Code repeatedly including payments to herself at the very least creating an appearance of impropriety by paying herself for damages incurred to her personal vehicle as well as questionable use of the Village purchase card. Bruton/Wismer Ex B – 4 at pgs. 79 and 86.

18. Additionally, during the fiscal year ending June 30, 2018, Klaus as the Village procurement manager engaged professional engineering services without competitive bidding required by the Procurement Code resulting in \$180,414 in questionable payment during the fiscal year ending June 30, 2019. Bruton/Wismer Ex B – 4 at pgs.89-90.

19. Together Chavez and Klaus signed the illegal PERA payments without informing the Council that the amounts were not budgeted in the Council's approved budget, or that a budget adjustment resolution would be necessary and failed to inform the Council of the issuance of the checks depriving the Council of its opportunity to exercise its lawful authority to approve and have oversight over Village finances as required by NMSA 1978, §3-12-3A also depriving the public of its right to notice and opportunity to attend the Council meeting to discuss the issuance of the checks, or to view a record of the Council's decision. Open Meetings Act NMSA 1978 §10-15-1 et. seq. and Inspection of Public Records Act NMSA 1978 §14-2-1 et. seq.

20. The checks issued January 5, 2018, were not payroll checks, there was no withholding, those checks had to have been payment for services outside of the employee payroll thus they constituted payments falling within Klaus' responsibilities as the "procurement person" in the job description. Klaus Exhibit 2.

21. Klaus, in violation of the Governmental Conduct Act NMSA 1978 §10-16-4 prohibiting official Acts for personal financial interests co-signed her own check for \$10,752.58. Bruton/Wismer Ex B-4 at p. 72.

22. Upon the election of Mayor Bruton in November of 2019 and the subsequent appointment of Michael Wismer as Village Clerk, Mr. Wismer was instructed to do an accounting of all Village personnel and property.

23. During Mr. Wismer's accounting of Village personnel and property, Mr. Wismer in his capacity as Clerk, upon review of documentation related to the illegal PERA payments and his personal observations did reach a determination that there was cause for termination and a recommendation to Mayor Bruton that Klaus be terminated was in the best interests of the Village.

24. Mr. Wismer made the recommendation to Mayor Bruton that there was cause for Klaus' termination; Mayor Burton concurred in Mr. Wismer's recommendation of termination and passed the issue to the council for their approval or disapproval.

25. A hearing was conducted April 6, 2020, on Mayor Bruton's request that the Council terminate Klaus, the parties, Mayor Bruton and Mr. Wismer presenting their case in support of termination. Attorney Duff Westbrook representing Klaus presented her case in opposition to the termination.

26. After the parties finished presenting their cases the Council went into executive session with only the four Councilors and the Village attorney present during which they discussed the issues, did not make any decisions, then reconvened in the public hearing and made a decision, the only ones voting being the four Councilors.

CONCLUSIONS OF LAW

Village Personnel policy ordinance #157 Section 19 defines salaried employees as being "at will," or terminable with or without cause.

Village Clerk Wismer recommended to Mayor Jake Bruton that Klaus, an at will employee, be terminated.

Village Clerk Manager Wismer also recommended to Mayor Jake Bruton that Klaus be terminated for cause.

On April 6, 2019, after hearing this matter, the parties Mayor Bruton, Mr. Wismer presenting their case in support of termination, attorney Duff Westbrook appearing representing Klaus and presenting her case in opposition to the termination, the Council voting four in favor zero opposed, terminated Klaus, effective April 15, 2020.

THEREFORE Klaus, on recommendation of the Mayor is terminated.

Mayor pro tem, Councilor
Maxine Wilson

Councilor Yvette Garcia

Councilor Don Johnson

Councilor Felix Garcia

APPENDIX A **COST – FLAT HOURLY RATE**

A Flat hourly rate for providing services as City of Albuquerque's Personnel Hearing Officer shall be based on the following categories:

Personnel Hearings (Primary), will be billed in tenth of an hour increments based on the following fee schedule:

Years	Hourly Rate
5-9.99	\$130
10+	\$160

I certify these fees will be honored if I (individual hearing officer) is selected as the finalist.

Frank Coppler 03/03/2025
Signature Date

FRANK COPPLER, PARTNER
(Name Printed and Title)

COPPLER LAW FIRM, P.C.
Firm Name

**RIPLEY B. HARWOOD, P.C.
TECHNICAL PROPOSAL**

**PERSONNEL HEARING OFFICER SERVICES RFP No. P2025-647-OCC-ED
(January 13, 2025)**

Submitted by:

**RIPLEY B. HARWOOD, P.C.
6565 Americas Parkway N.E., Suite 200
Albuquerque, New Mexico 87110
505-480-8473
Ripharwoodrbhpc@gmail.com**

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TECHNICAL PROPOSAL

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Writing sample - Hearing Officer's Report (online via Bonfire)

Pay Equity Reporting Form (online via Bonfire)

APPENDIX A - Cost Proposal (online via Bonfire)

APPENDIX B - Letters of Reference (3) (attached)

APPENDIX C - Resume (attached)

APPENDIX D – Certificate of Good Standing (attached)

APPENDIX E - Statement of Qualifications (attached)

I. OFFEROR IDENTIFICATION

Offeror is the law firm of Ripley B. Harwood, P.C., a New Mexico for profit subchapter S corporation whose principal and sole owner and the author of this technical proposal, is Ripley B. ("Rip") Harwood, hereafter referenced throughout in the first-person singular "I". I am the firm's only employee. The firm does not presently employ any subcontractors. The business address: 6565 Americas Parkway NE Suite 200, Albuquerque NM 87110. The firm provides hearing officer services to state and municipal government agencies, including the City of Albuquerque. To a lesser extent, the firm also provides legal representation, principally to corporate and State of New Mexico government entities, in the field of insurance and governmental liability civil defense. The person authorized to execute the contract resulting from this RFP is Rip Harwood, 505 480 8473; Ripharwoodrbhpc@gmail.com.

The firm agrees to comply with all laws, regulations, and rules referenced in the RFP, and states that it is currently in compliance with same. The firm agrees to the Required Contract Terms.

The firm maintains professional liability insurance in the amount of \$2,000,000 per claim and \$2,000,000 per annum aggregate. I maintain automobile liability coverage in the amount of \$2,000,000 per claim and \$2,000,000 per occurrence (underlying and umbrella coverage). Proof of coverage is available for inspection.

Offeror acknowledges receipt of Addendum 1 to this RFP, dated February 18, 2025.

II. OFFEROR QUALIFICATIONS

I am a member in good standing of the New Mexico Bar, the federal district court for the District of New Mexico, the federal district court for the District of South Dakota, the Tenth Circuit Court of Appeals, the United States Supreme Court, and various tribal courts around the country too numerous to list. I have been continuously licensed to practice law in New Mexico and have actively

engaged in the practice of civil law, including administrative law and proceedings in New Mexico, since 1985. I am generally familiar with administrative law, administrative procedure, and administrative rules of evidence. If selected, I agree to abide by the Code of Judicial Conduct. I am not actively involved in the political affairs of the City of Albuquerque.

III. EXPERIENCE

A. Current Experience

I have current contracts with the City of Albuquerque to serve as hearing officer in various capacities including to the Albuquerque-Bernalillo County Air Quality Control Board, Automated Speed Enforcement, personnel appeals, building code permitting, Integrated Development Ordinance and Uniform Housing Code matters, Housing Authority appeals/revocations, SOBO enforcement/appeals, food sanitation ordinance matters, Heart ordinance and Angel's Law animal matters, Zoning matters, and miscellaneous matters such as towed vehicles, Old Town vendors, and pawnbroker regulation enforcement and appeals. In these capacities I preside over both public information hearings and litigated adjudicatory hearings.

I have a current contract to serve as hearing officer for the New Mexico Energy and Minerals Department. In that capacity I serve both the Oil Conservation Division and the Oil Conservation Commission as hearing officer presiding over contested disputes involving statewide fracking interests and other oil and gas rights.

I have a current contract to serve as hearing officer to the Superintendent of Insurance. This is a new contract so the exact nature of the work remains to be seen, but will generally involve presiding over hearings regulating companies authorized to underwrite insurance coverage in the State of New Mexico.

Although I no longer solicit active litigation cases, I have a few remaining cases pending in the First Judicial District Court, in New Mexico's Court of Appeals, and in New Mexico's Supreme Court.

B. Past Experience

I served as hearing officer to the City of Albuquerque from 2019-present conducting various hearings pursuant to the City's Merit System and Independent Hearing Office Ordinances. In that capacity, I presided over many evidentiary appeals of City employee disciplinary action and made findings of fact, conclusions of law, and recommendations to the City Personnel Board. **Pursuant to §2.1.3.2 of the RFP, two letters of reference with respect to this work are attached as Appendix B.**

I served as hearing officer to New Mexico's Energy and Minerals Department from 2020-21, presiding over Oil Conservation Division dockets involving oil and gas lease infractions, proposed monetary penalties, and permit terminations. **Pursuant to §2.1.3.2 of the RFP, a letter of reference with respect to this work is attached as Appendix B.**

My earliest administrative law experience began when he went to work for New Mexico's Department of Health and Environment in 1987. I was assigned to represent what was then the Las Vegas Medical Center (LVMC), a state-operated psychiatric hospital.

At that time, a primary NMDOH objective was to improve the quality of care at LVMC by attaining and meeting stringent national hospital accreditation standards. Part of that extensive process, implemented by a newly hired, no-nonsense clinical director, involved the discipline and termination of many dozens of hospital personnel. I defended LVMC's disciplinary decisions in many appeals before the State Personnel Board and its hearing officers.

I gained a different perspective on administrative law at NMDOH in about 1989 when I was tasked with writing the implementing and program enforcement regulations for what was then the

brand new Womens, Infants, and Childrens Program (WIC), providing food and nutrition assistance to underprivileged mothers. Although they have been revised and no doubt improved, the basic regulations I wrote remain the core framework for a program now in existence for more than thirty years.

I gained additional administrative law experience when I transitioned to work for the New Mexico Environment Department (NMED), in 1989, when it split from NMDOH and became a separate Cabinet-level Department. I continued to defend the new agency's personnel actions and also represented NMED in regulatory proceedings before the Water Quality Control Commission and others administrative bodies. I also represented agency interests in administrative and court proceedings before the EEOC and under New Mexico's Human Rights Act.

In 1995-96 I was trial counsel and appellate counsel in the reported decision titled *Weidler v. Big J Enterprises, Inc.*, 1998-NMCA-021. The case evolved from a state OHSB whistleblower complaint of unsafe work practices at a company owned by Gary Johnson. OHSB found the case meritorious and attempts to settle it administratively failed. OHSB and the whistleblower went to trial against Big J Enterprises in April, 1996, by which time Gary Johnson had been elected New Mexico's Governor. Big J lost its appeal of the jury award in favor of OHSB and the whistleblower, and Governor Johnson paid a large sum out-of-pocket to satisfy the judgment. By that time, Governor Johnson was my indirect but ultimate boss. Deeming it unrealistic to expect advancement in government service under such circumstances, I returned to private practice.

I spent most of the next twenty years in private practice, first with an Albuquerque-based law firm and then in my own private practice. This was an active civil trial practice, mostly defense oriented. Between 1995 and 2021, I participated in approximately 34 trials, mostly jury trials, in both state and federal courts. **See Trials List attached as Appendix 5.** This experience warrants inclusion in this narrative because while not directly related to administrative law, such trial practice hones

decision-making skills and develops a deeper understanding of the rules of evidence and its nuances. Such experience has served me well in the role of hearing officer.

During that same time frame, I also continued to engage directly in administrative law projects. NMED hired me on a contract basis to preside over the 2006 Waste Isolation Pilot Plant (WIPP) reauthorization hearings held in Carlsbad and Santa Fe. I oversaw multi-day hearings in both locations, reviewed and analyzed complex technical materials and public input, and provided detailed findings of fact, conclusions of law, and a recommendation to the NMED Secretary.

I continued to provide administrative law, legal support, and consulting services to NMED under contracts in 2006, 2010, 2011, and 2018. In that capacity, I represented the agency in appeals of disciplinary decisions before the State Personnel Board. From time to time, I also presided over public hearings related to agency permit decisions.

I served as contract counsel to the NMED Secretary in the Matter of the Rhino Environmental Landfill permit. *See Colonias Development Council v. Rhino Environmental Services, Inc.*, 2005-NMSC-024. I advised the Secretary following the Supreme Court mandated rehearing, and represented NMED on appeal in defense of the Secretary's final decision. *See In Re Camino Real Environmental Center, Inc. v. New Mexico Environment Department*, 2010-NMCA-057.

My past private practice clients have included Allstate Insurance Company, GEICO Insurance Company, the New Mexico Department of Public Safety, the Bernalillo County Metropolitan Court, the New Mexico State Police Academy, and the New Mexico Office of the Public Defender. Current clients include the New Mexico Department of Transportation, the State Risk Management Division of the General Services Department, Buffalo Thunder Resort and Casino, Cities of Gold Casino and Resort, and the Pueblo of Pojoaque.

IV. MANAGEMENT SUMMARY

I am a sole legal practitioner. I exercise no *de facto* authority or control over City of Albuquerque staff. However, following the retirement of the City's in-house hearing officer, Stanley Harada, last year, I am increasingly called upon by the City's hearing office administrative assistants and hearing monitors for advice and guidance on legal substantive and procedural questions arising in the course of business. I do my best to provide responses consistent with general principles of administrative law, the applicable ordinance or regulation, and with the goal of educating the staff as to the underlying "whys and hows" of particular legal requirements and procedures. Should I be selected, interface with City staff will continue to be directly between them and me with no intermediaries.

SUBMITTED:

RIPLEY B. HARWOOD, P.C.

/s/ *Ripley B. Harwood*

RIPLEY B. HARWOOD, ESQ.
6565 Americas Parkway NE, Suite 200
Albuquerque, New Mexico 87110
505 480-8473
Ripharwoodrbhpc@gmail.com

APPENDIX B – Letters of Reference (3) (attached)

State of New Mexico
Energy, Minerals and Natural Resources Department

Michelle Lujan Grisham
Governor

Sarah Cottrell Propst
Cabinet Secretary

Todd E. Leahy, JD, PhD
Deputy Cabinet Secretary

Adrienne Sandoval
Director, Oil Conservation Division



October 12, 2022

Re: Ripley Harwood Reference

To Whom It May Concern:

I am the Law Clerk for the Oil Conservation Division (OCD) of the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD). In that capacity, I schedule and host all examiner hearings which the OCD conducts. Due to Covid and the fact that our cases involve persons statewide and surrounding states, our hearings are conducted via internet using the Webex platform (similar to Zoom).

Mr. Harwood became one of our contract hearings officers last year. He presided over one of our dockets which included hearings on several ongoing cases. I was in attendance throughout that proceeding. Although Mr. Harwood and I had never previously worked together, I was pleased with and impressed by the way in which he handled both the procedural and evidentiary issues arising in those hearings. It was clear to me that he brought practice and experience to the task. His contract with EMNRD has recently been renewed, and I look forward to working with Mr. Harwood on many future hearings over the coming years. I may be contacted at (505) 469-5527 if you have any questions.

Sincerely,

/s/ Marlene Salvidrez

Marlene Salvidrez
OCD Law Clerk

Judith L. Durzo

Attorney and Counselor at Law
1430 Honeysuckle Drive NE
Albuquerque, New Mexico 87122
(505) 350-6271
jdurzo@mac.com

October 25, 2022

City of Albuquerque Personnel Board
Personnel Hearing Officer Selection Committee

Re: Letter of Recommendation for Ripley Harwood, Esq.

Dear Sir or Madam,

It is my great pleasure to recommend Rip Harwood for the position of CABQ Personnel Hearing Officer. I have known and periodically worked with Mr. Harwood since law school, from which we were graduated in 1985.

Much of my career has been spent as a litigator and as a hearing officer for various governmental entities. I have served as Chairwoman for the New Mexico Medical Review Commission (NMMRC) for over 30 years. In these capacities, I have worked with Rip Harwood as a Personnel Hearing Officer for the City of Albuquerque and for the Albuquerque Bernalillo County Water Utility Authority where, from time to time, we consulted on cases. I found him to have a solid understanding of the law and its application to the facts; his input was always valuable. Mr. Harwood is fair, but willing to make hard decisions when necessary. His opinions are concise and well-reasoned.

Further, over the years, Mr. Harwood has served many times as a panelist on NMMRC cases that I chaired; he was consistently well prepared, he understood the issues, asked pertinent questions during each hearing and contributed helpful and germane insights during deliberations.

These are skills which served Mr. Harwood and CABQ well during his tenure as Personnel Hearing Officer and would again if you are wise enough to choose him.

Please do not hesitate to contact me if you need further information.

Thank you,


Judith L. Durzo

THE D'AMATO LAW FIRM, P.C.

John James D'Amato, Jr.
Attorney at Law

October 27th, 2022

Reference: Letter of Reference (Ripley Harwood)

To Whom It May Concern:

This letter of recommendation is written from one who has known Rip Harwood for over twenty years. Within the recent past, I have had the opportunity to present a Personnel Board disciplinary appeal on behalf of the Albuquerque Police Officers' Association for one of its' members before the City of Albuquerque Personnel Board. Mr. Harwood served as the hearing officer in that case.

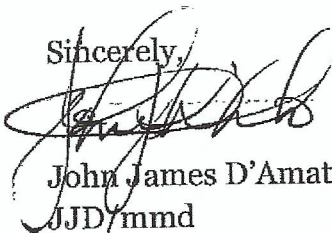
Throughout the proceedings Mr. Harwood adhered to the professional canons for lawyers. He was respectful to the witnesses who testified, the parties, and their attorneys. He was mindful to his obligation in publishing findings of fact and conclusions of law.

For a period of time, Mr. Harwood's law office and my office were in the same building. As neighbors, we became more familiar with each other over the years. Mr. Harwood has always been knowledgeable and professional with me. I have seen him interact with others and his communication and people skills are excellent.

Without reservation I can highly recommend him for the opportunity to serve a term(s) as the City's representative on its Personnel Board.

If you need any additional information, please contact me. Sending my highest regards, I remain,

Sincerely,



John James D'Amato, Jr.

JJD/mmd

Street Address:
1112 Second Street NW
Albuquerque, NM 87102

Telephone: (505) 246-0045
Facsimile: (505) 247-0600
Toll Free: 1-800-945-4529
DAmatoLaw@gmail.com

Mailing Address:
P.O. Box 7888
Albuquerque, NM 87194

APPENDIX C – Resume (attached)

RIPLEY B. HARWOOD, P.C.
6565 Americas Parkway N.E., Suite 200
Albuquerque, N.M. 871 10
505-480-8473 (c)
Ripharwoodrbhpc@gmail.com

Education

University of New Mexico School of Law - J.D. May, 1985
University of Miami - Coral Gables, Florida. B.B.A. – Finance – May 1976.
Escola Americana - Rio de Janeiro, Brazil – Class of '72.

Licensures

United States Supreme Court: February 20, 2001
Federal District of New Mexico: February 12, 1986
Federal District of North Dakota: March 16, 2007
Federal District of Wisconsin: 2012
Tenth Circuit Court of Appeals: November 13, 1989
New Mexico State Bar Licensure: October 7, 1985
Quinault Indian Tribal Court: 2012
Standing Rock Sioux Tribal Court: 2007
Santa Clara Pueblo Tribal Court: 2017
Pojoaque Pueblo Tribal Court: 2019

Work Experience

RIPLEY B. HARWOOD, P.C.	ALBUQUERQUE, NM
President/Sole Shareholder	2/04 to present

Principally engaged in the provision of hearing officer and administrative law judge services to New Mexico state agencies and municipalities. Also representing corporate and tribal defendants, insurers, and the State of New Mexico in civil litigation and appeals including personal injury, insurance law and insurance bad faith, product liability, professional negligence, employment discrimination, Indian law, and environmental law. Substantial state and federal jury trial experience.

JEFFRIES & RUGGE, P.C.	ALBUQUERQUE, NM
Of Counsel	2/04 to 7/05
Associate Attorney	7/96 TO 2/04

NEW MEXICO ENVIRONMENT DEPARTMENT	SANTA FE, NM
Special Assistant Attorney General	1/88 TO 7/96

CARPENTER & CHAVEZ, P.A.	ALBUQUERQUE, NM
Associate Attorney	1/85 to 6/87

G.A.B. BUSINESS SERVICES, INC.	ARLINGTON, TX
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RIPLEY B. HARWOOD: *Resume*

Page 2

Insurance Adjuster

ALBUQUERQUE, NM
1978 TO 1982

MEMBERSHIPS, AFFILIATIONS, SPECIAL ACCOMPLISHMENTS

Forty years in legal practice including more than thirty jury and bench trials, administrative law; city and state administrative hearing officer practice, insurance good faith expert witness.

Member: American Bar Association, State Bar of New Mexico, Federal District of New Mexico Bar Association, Medical/Legal Review Panel member (over twenty years), New Mexico Defense Lawyers Association, Defense Research Institute.

Publications: Stirring The Air -- New Mexico's Court Of Appeals Raises Dust Under The Air Quality Control Act, a case note on JUDITH M. ESPINOSA, *et al.* v. ROSWELL TOWERS, INC. *et al.*,

Watts, Atkinson, Hennessy, *Low Speed Automobile Accidents*, 3rd Ed. 2003; contributing author Chapter 23: "A Defense Viewpoint: Surviving *Daubert/Kumho* Challenges -- Getting Beyond the *Ipsa Dixit*"

"Between Scylla and Charybdis: Supreme Court Eliminates Another Safe Passage Through the Bad Faith Narrows" *New Mexico DLA News*, 7:2 (1998): 7-9.

"The Seatbelt Non-Use Defense: Buckling Down to the New Millennium: *New Mexico DLA News*, 8:3 (1999): 5, 8-9.

Published book author: "*The Story of a Lucky Duck*", Newman Springs Pub. Co. (2023). (available through Amazon and Barnes and Noble).

U.S. Coast Guard Licensed Captain 000662266.

-- *References available on request* --

APPENDIX D – Certificate of Good Standing (attached)



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Certificate

STATE OF NEW MEXICO }
 } ss.
 SUPREME COURT }

I, ELIZABETH A. GARCIA, Chief Clerk of the Supreme Court of the State of New Mexico, hereby certify that, upon passing a written examination prescribed by the New Mexico Board of Bar Examiners, **RIPLEY B. HARWOOD** was admitted to practice law in the Supreme Court and other courts of the State of New Mexico on **October 7, 1985**, and has at all times since been and is now an active member of the Bar of said Supreme Court in good standing.

“Good standing” means that the attorney is current on payment of State Bar dues, has complied with Minimum Continuing Legal Education requirements, and is not presently under either administrative or disciplinary suspension. No disciplinary action involving professional misconduct has been taken against the attorney's law license. This certification expires 30 days from this date, unless sooner revoked or rendered invalid by operation of rule or law.



WITNESS, My official signature and the seal of said Court this 28th day of February, 2025.

Elizabeth A. Garcia
 Chief Clerk of the Supreme Court
 of the State of New Mexico

By: Jessica Gilmore
 Deputy Clerk

APPENDIX E - Statement of Qualifications (attached)

PERSONNEL HEARING OFFICER SERVICES RFP No. 2025-647-OCC-ED

STATEMENT OF QUALIFICATIONS

Pursuant to RFP §2.1.5.2, Offeror hereby certifies that he is a member in good standing of the New Mexico Bar, has been continuously licensed to practice law in New Mexico and has actively engaged in the practice of civil law, including administrative law and proceedings in New Mexico, since 1985, is generally familiar with administrative law, administrative procedure, and administrative rules of evidence, agrees to abide by the Code of Judicial Conduct, and is not actively involved in the political affairs of the City of Albuquerque.


Rip Harwood

2/19/2025
Date

BEFORE THE CITY OF ALBUQUERQUE
PERSONNEL BOARD

IN THE MATTERS OF ERIC WILENSKY,
VIOLETA BACA and BRENDA JOHNSON,
Former Employees of the City of Albuquerque,

PB 23-22, 23-23, 23-24

Grievants.

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter came before the Hearing Officer at an in-person hearing held on October 22-24, 2024. The City of Albuquerque appeared through City Attorneys, Catherine Gonzales, Esq., and Evan Crocker, Esq. Grievants Violeta Baca and Brenda Johnson,¹ appeared through counsel, Frederick M. Mowrer, Esq. (Sanchez, Mowrer, & Desiderio, P.C.). Grievant, Eric Wilensky, failed to appear.²

Pursuant to PB Rule 12, Hearing Officer Rip Harwood (Ripley B. Harwood, P.C.), submits the following report, findings of fact and conclusions of law, recommended decision, and draft proposed Order to the City of Albuquerque Personnel Board for review and consideration:

¹ To avoid confusion, Grievant Brenda Johnson is referenced throughout this report by that name, and not by her current surname, "Malloy". However, it should be noted that all references to Malloy in the hearing transcript are to Brenda Johnson.

² Eric Wilensky's termination is upheld on procedural grounds. He failed to appear at the hearing and forfeited his appeal. Therefore, his role and conduct in the incident in question is not reviewed or analyzed.

I. INCIDENT FACTS AND TIMELINE

Just short of midnight on June 29, 2023, a deadly force incident unfolded at the intersection of Lomas and Louisiana Boulevards in southeast Albuquerque involving a suspect hereafter referred to as "JS". JS was shot to death in the incident. Two bystanders were accidentally struck and injured by police bullets.

An individual matching JS's description was a suspect in a stabbing incident that took place earlier that night at the McDonalds on the southwest corner of Lomas and San Pedro. The McDonalds victim, an adult male driver, was stabbed in the neck by his passenger, JS. JS fled that scene on foot. Thus, at the time of the deadly force incident at issue in these consolidated cases, police were actively looking for a dangerous, at-large, on-foot suspect, dressed in black carrying a distinctive pink backpack, and presumed to be armed with a knife.

About two hours after the McDonalds stabbing, officers learned that a person matching the McDonalds suspect's description had been spotted at the Lomas/Louisiana Boulevard intersection. Officer Baca drove there from the McDonalds. She arrived about 23:50. COA Ex.1 at p. 6/21 (CADs Report 23:49:53 entry).

Upon arrival, Officer Baca spotted a young male dressed in black, wearing white shoes, standing next to a pink backpack. See COA ex. 10 at p. 2 of 3. Officer Baca radioed in that she had in sight a male holding a knife and matching the McDonalds suspect's description. Day 2 TR 221:25; 222:1 & 16-17 (Baca testimony); see COA Ex.1 at p. 7/21 (CADs Report 23:51:20 entry); COA Ex. 10 (Zachary Garris report narrative, p. 1/2); COA Ex. 17, p. 17/54, L25-26.

Officer Relaford arrived next. He pulls up behind Baca on westbound Lomas next to Burger King. COA Ex. 7 at 23:53:09 (Relaford OBRD).³ He and Officer Baca confer briefly behind her unit regarding whether JS was indeed the McDonalds suspect. They decide that he is. Day 2 TR 225:7 (Baca).

At 23:54:10 Officer Cordova pulls up behind Relaford. COA Ex. 4 (Cordova OBRD). Over the next 45 seconds or so, Relaford and Cordova ask Baca if she is going to get back in the unit and they say "we'll walk". COA Ex. 4 (Cordova OBRD); COA Ex. 7 (Relaford OBRD ~23:54:32-56).

In the meantime, JS has moved to the Louisiana median strip near the traffic light north of Lomas. He is seen randomly pacing up and down the median strip. He appears to be on drugs. Day 2 TR 223:21 (Baca). He walks erratically in and out of the southbound traffic lanes. This occurs for about thirty-seven seconds, between about 23:54:33 - 23:55:10. COA Ex. 2 (Lobos Towing dashcam).

At about 23:55:10, JS begins to walk steadily northbound on the median. COA Ex. 2 (Lobos Towing dashcam). This occurs after the officers have conferred and about the same time that Relaford and Cordova begin walking across the Burger King parking lot and northwest towards JS. COA Ex. 7 (Relaford OBRD); COA Ex. 2 (tow truck dashcam ~23:55:16-32). JS continues to move northward along the median, picking up his pace and stopping twice to look back towards the south. COA Ex. 2 (tow truck dashcam at 23:55:26 & 23:55:33).

³ The rest of this background/timeline is summarized in the present tense as it better conveys the speed at which events unfolded that night and because most of the narrative is based upon real-time OBRD and dashcam video captures.

At this point in time events accelerate rapidly. At 23:55:35 Officer Baca turns north onto Louisiana and drives towards JS. COA Ex. 2. She activates lights and siren. As Baca nears JS he abruptly changes course and breaks into a run westward across Louisiana towards a bus stop. *Id.*, ~23:55:47.

As JS begins to run, Officers Relaford and Cordova begin to run. *Id.* Officer Baca continues northbound, makes a u-turn, stops her vehicle to block southbound Louisiana traffic north of JS, and bolts from her vehicle. *Id.*, ~23:56:00. Sargeant Johnson now arrives. She stops her vehicle on northbound Louisiana across from the bus stop where JS has run. She can be heard saying "going 10-3... subject is going to be running". COA Ex. 3 (B. Johnson OBRD ~23:55:53). Three seconds later, she says "fuck", and leaps from her unit with her pistol gripped in her right hand. *Id.*, 23:55:57-23:56:01. Two to three seconds later the first salvo of gunfire erupts.

Officer Cordova's OBRD best captures events immediately preceding the first police gunfire volley. It shows JS repeatedly ignoring shouted commands to "drop the knife – you're gonna get shot; you're gonna get shot!" COA Ex. 4, ~23:55:57-23:56:00 (C. Cordova OBRD). With knife raised in his right hand in a stabbing position, JS suddenly lunges at a bus stop bystander wearing a blue shirt hereafter referred to as "RB". Officer Cordova's OBRD shows that JS actually makes physical contact with RB as police fire their first volley. COA Ex. 4, 23:56:00-23:56:07.

Both JS and RB fall to the ground after this first volley. RB is lying about three feet southwest of JS. JS is lying on his right side facing south and rolls onto his back. *Id.*, 23:56:10. Officers continue to order JS to drop the knife or he will

be shot again. For about the next twenty-two seconds JS can be seen lying on the ground waving his empty left hand in the air as officers repeat commands to drop the knife. In the nighttime darkness I cannot personally tell from review of any of the OBRDs whether JS keeps the knife in his right hand, but for purposes of my review, I accept investigator Dickinson's analysis that at some point during these twenty-two seconds, JS reached behind his head with his right hand and dropped it. COA Ex. 17 at p. 29 of 54 (IAFD Narrative Report). This movement can be seen on Officer Cordova's OBRD occurring at about 23:56:30. COA Ex. 4.

Two seconds later however, JS makes a fluttering motion with his left hand and rolls rapidly to his left, pushing up onto both hands. Even from Cordova's OBRD view (further to the south of Officer Baca and Sargeant Johnson), JS's body and left hand momentarily block the view of his right hand. *Id.*, 23:56:32-33. Officers fire again, this time killing JS. *Id.*, 23:56:34-35.

II. REVIEW AND ANALYSIS OF FACTS AND EVIDENCE/APPLICATION TO ALLEGED POLICY VIOLATIONS

If I were tasked with drafting a training scenario best calculated to bring deadly force into play, I could hardly improve upon the actions JS elected that night. First, he was carrying a knife and matched the description of the McDonalds stabber from a couple of hours before, so he had already earned a presumption of armed and dangerous. Next, he showed every sign of planning a foot flight to the north once officers had him under surveillance. Third, instead of surrendering or simply running away when Officer Baca approached with lights and sirens, he instead raced to attack an apparent stranger with a knife. Fourth, he ignored repeated police commands to 'drop the knife or he was

going to get shot' and instead lunged towards RB with his knife raised in his right hand in a stabbing position as police fired their first volley. Finally, instead of staying immobile on the ground and surrendering after the first volley, about twenty seconds later JS rolled over and made as if to spring up. This movement shielded from officers' view the knife he had dropped behind his head, and shielded from view his right hand, such that officers could not tell whether JS had retrieved the knife. JS's sudden springing movement gave officers about 2 seconds to decide whether he had retrieved the knife and whether he presented a renewed threat of death or serious bodily harm to the now incapacitated adjacent bystander, RB. Assuming (as they had to), that he posed a renewed, imminent, and potentially deadly threat to RB, officers fired again.

In these multiple ways, JS wrote his own near-perfect script for death by gunfire. He alone is responsible for the deadly force brought to bear against him. His violent, unpredictable, and sudden actions simply left officers with no other options.

A. Serious analytical flaws in this investigation led to legally wrong, speculative, and logically faulty conclusions

The deadly force investigation of this incident was flawed in many serious respects. It is riddled with legally unsupportable and erroneous conclusions, which in turn led to the unfair censure of officers who should have had management's support for the terrible but necessary split-second decisions and actions which the OBRD evidence unequivocally proves they had to make and take. As detailed below, I conclude that Officer Baca and Acting Sergeant Johnson were terminated without just cause based upon legally and logically

unsustainable hindsight judgments irreconcilable with the objective evidence of an event that called for quick thinking and no hesitation; and whose critical elements unfolded in mere seconds, not minutes.

1. *Post hoc ergo propter hoc* logical fallacy

Two fundamental, interrelated analytical flaws undermine the IAFD investigation and invalidate its conclusions and the resulting discipline as to Officer Baca and Acting Sergeant Johnson. The first is a logical fallacy known in the law by the latin name: *post hoc ergo propter hoc*, meaning that because one event follows an earlier event, the earlier event must have caused the later event. The law everywhere rejects this premise as faulty logic and guesswork. See e.g., *Fisher Sand & Gravel Co. v. FNF Constr., Inc.*, No. 10-CV-0635 RB/SMV, 2014 WL 12572739, at *5 (D.N.M. June 4, 2014); *Doyle Wilson Homebuilder, Inc. v. Pickens*, 996 S.W.2d 387, 395 (Ct. App. Tx. 1999) (a presumption of fact cannot rest on a fact presumed).

Post hoc ergo propter hoc pervades the entire IAFD investigation. It is principally expressed in the supposition that if officers that night had taken time to plan an approach to JS (and/or implement a force array), the need for deadly force may have been avoided. This was repeatedly referenced as the so-called “totality of the circumstances” in the testimony of investigator Dickinson:

Q: the failure to make a plan, how does that play into your evaluation of the use of deadly force?

A: Totality of the circumstances.

Day 1 TR 92:24-25; TR 93:5 (Investigator Dickinson).

A: [H]er (Baca's) approaching the individual and turning her lights on... went into the totality of ... the circumstances. [H]ad additional units been requested, a perimeter been set up around the male, things may have taken a different turn. But approaching the way she did in her vehicle right next to the male with lights and sirens, the male ran from officers as opposed to running to the males at the bus [stop]. That impacted the totality of the circumstances as far as pre-use of force.

Day 1 TR 101:7-20 (Investigator Dickinson).

A: Had a different approach ... plan been discussed, we may have been dealing with an entirely different situation.

Q: And what do you mean by that?

A: Potentially the officer's use of force wouldn't have been necessary.

Q: And why is that?

A: Because they pushed the man to the bystanders as he's armed with a knife.

Day 1 TR 102:18-25; 103:1 (Investigator Dickinson).

A: [P]olicy and training were not followed regarding pre-use of force. A plan that -- having a force array in place. So having a less lethal option available. They didn't plan the approach, didn't request additional resources. And so when her approach pushed [JS] westbound across the street to the bystanders, officers were then put into a situation where they had to react. Had that not occurred, it may have been a different situation.

Day 1 TR 114:11-20 (Investigator Dickinson).

Q: [T]he main charge in this case is a violation of the use of force policy because the defendant, when he was getting back up, was not armed with a knife -- true?

A: It was the totality of the circumstances, sir. It was from -- it was the lack of planning, the lack of -- the lack of setting up a plan from the get-go all the way up until the end. It was a totality.

Day 1 TR 179:9-18 (Investigator Dickinson).

A: She (Brenda Johnson) should have slowed the situation down, made sure that a force array was in place, made sure that there was additional resources requested, requested additional resources had they

not (inaudible) (inaudible) and have ... and advise the officers to wait for her arrival.

Day 1 TR 122:19-23 (Investigator Dickinson).

The analytical problem with this entire line of reasoning is that there is absolutely no demonstrable connection between the lack of a plan to apprehend JS that night, the failure to set up a force array, Sargeant Johnson's alleged failure to "slow the situation down" or otherwise act as a supervisor, and the sudden, unforeseeable turn of events that gave rise to a virtually instantaneous need to deploy deadly force.

"The proposition '*post hoc, ergo propter hoc*' has a seductive power on the human mind. When courts do not guard against application of this 'fallacy of thinking' by the fact finder, they are dispensing justice by speculation."

Garcia v. Borden, Inc., 1993-NMCA-047, ¶ 55. The fundamental problem with *post hoc ergo propter hoc* is that it is only sometimes when one event follows an earlier event that the earlier event causes the later one. Absent evidence of a connection beyond mere proximity in time, the connection itself remains unproven. This logical fallacy can arise in any factual context, but is most widely illustrated in so-called 'toxic tort' cases. See e.g., *Tuschhoff v. USIC Locating Servs., LLC*, No. 19-CV-01149-EFM, 2022 WL 3701207, at *4 (D. Kan. Aug. 26, 2022) (the symptoms follow the exposure; therefore, they must be due to it).

That is what occurred in this investigation. It is no surprise that the City's witnesses had difficulty at the hearing articulating any "totality of the circumstances" cause and effect connection. There is instead a logical cause and effect disconnect in the events that night that requires no specialized legal training to discern. Simply put, there was no "totality of circumstances" beyond

the ten seconds or so in which officers had to react to JS's violent assault. There was first one set of circumstances – a suspect who appeared to be planning to run from police. This unfolded over a period of a few minutes. Then suddenly there was an entirely new set of circumstances – a suspect who instead of fleeing, took it upon himself to race toward a bus stop and lunge at a bystander with knife raised. This second event developed over a period spanning about ten seconds.

Theorizing that if a plan to apprehend JS that night had been set up, deadly force may not have been required is a classic example of *post hoc ergo propter hoc* speculation. Indeed, investigator Dickinson herself retracted the statement that Officer Baca's approach to JS that night forced him to run to the bus stop:

Q: [Y]ou used a term, forced him to run across the street to the bus stop?

A: Forced him from her position westbound.

Q: Okay. So what evidence did you have... that [Baca's] approaching him, trying to stop him leaving, forced him to run to the bus stop instead of just standing there or putting his hands up or any other action? How did you conclude that?

A: [O]nce Officer Baca turned the corner, drove right next to him and activated her lights and sirens, the male immediately ran westbound to the bus stop. *So maybe I used an incorrect term. Maybe forced was incorrect. However, he did run from her westbound.*

Day 1 TR 150:19-25; TR 151:1-16 (Investigator Dickinson – *emphasis added*).

As Sargeant Christopher Harp aptly put it: "At the end of the day, the suspect chose to do what he wanted to do when he was contacted by officers." Day 1 TR 222:9-11. It was his decision to run to the bus stop. Day 1 TR 233:5-11.

That is exactly right and precisely the point: JS could have run in any direction. Officer Baca believed he was considering flight:

A: This guy saw me right away. As soon as I hit Louisiana and Lomas, he saw me.

Day 1 TR 223:16-17 (Baca).

A: ... he sees where we are. He knows that we're looking at him and talking about him. So he crosses the median. My concern -- our concern right there was he's trying to get away from us. And then -- so during that, I -- we start -- I start telling them, "Okay, so I'll approach in my vehicle to go and detain -- detain the -- the defendant."

Day 1 TR 226:8-14 (Baca).

A: My thinking was he was going to run northbound or maybe he was going to run into the neighborhood by the next street going into the -- there's apartment complexes and then a business and then there's houses. I think he was going to do that.

Day 1 TR 227:16-20 (Baca)

The point is, no one expected that JS would run towards a bystander at the bus stop when officers approached him to try to curtail a foot chase. At the time of the officers' approach, JS appeared to be trying to distance himself from everybody by moving steadily to the north. The bus stop presented no avenue of escape. The foregoing testimony of investigator Dickinson and Sargeant Harp confirms that no evidence supports the speculation that any officers' approach, much less singularly that of Officer Baca, played any causal role in JS's perverse decision to run towards the bus stop and attack RB.

A post-incident interview with a civilian witness provides the only clue as to JS's possible motive for running to the bus stop. This witness said that JS appeared to be mad at RB and that he overheard JS asking RB as he

approached: "Hey, where's my beans? Where's my beans"?⁴ COA Ex. 10, at Bates 000022 (Tod Babcock interview).

Thus, the only evidence of any motive for JS's sudden decision to assault RB is one that responding officers could not possibly have known: that JS may have been acquainted with bystander, RB. Investigator Dickinson said she considered witness statements (Day 1 TR at 70:14-19), yet no one at the hearing raised this important evidence.

This is the only actual evidence of any kind as to JS's motive for running towards the bus stop. By contrast, no evidence whatsoever supports the IAFD supposition that Baca's asserted lack of an apprehension plan or method of approach to JS had anything to do with his rogue decision. Investigator Dickinson's assertion that "[JS] ran from officers as opposed to running to the males at the bus",⁵ and the accompanying suggestion that Officer Baca's approach method caused JS to do so is nothing but rank speculation. Accordingly, it had no business being factored into a supposed "totality of circumstances" evaluation of either pre-use of force, or the subsequent use of deadly force.

In sum, there is simply no evidentiary basis for the broad-based accusation that the asserted lack of a plan to apprehend JS had anything to do with the subsequent sudden and immediate need to deploy deadly force. Once JS's

⁴ This statement apparently pertained to a drug transaction ("beans" being understood to be slang for fentanyl pills). COA Ex. 10, at Bates 000022 (Tod Babcock interview).

⁵ Day 1 TR 101:7-20 (Investigator Dickinson).

actions required officers to shift from apprehension to deterrence, any plan to apprehend him, no matter how thorough, became irrelevant, academic history.

It was legally wrong and therefore unfair to blame either Officer Baca or Sergeant Johnson for JS's decision to attack RB, based on nothing more than guesswork that a more thorough plan to detain JS might have changed the outcome. The magnitude of this error is only aggravated by the admitted fact that the 'failure to plan' allegation against Baca and Johnson was administratively closed. Day 1 TR 90:10. Thus, for multiple reasons such claims were an improper basis for any speculation that planning might have altered JS's actions, much less obviated the need to deploy deadly force.

2. Independent intervening cause

Not only did the so-called "totality of circumstances" analysis exemplify the foregoing logical fallacy, it also overlooked the legal doctrine of independent intervening cause. An independent intervening cause is "a cause which interrupts the natural sequence of events, turns aside their cause, prevents the natural and probable results of the original act or omission, and produces a different result, that could not have been reasonably foreseen." *Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 23. Criminal acts by third parties are a classic example of an independent intervening cause. *Id.* at fn. 3.

Officer Baca testified that when she pulled up towards JS and activated her lights she thought he would stop and respond to commands, but he instead "did something I didn't think he would do." COA Ex. 25, p. 14, L 587-599.

Q: So what happens when you turn on your lights and sirens, what does the defendant do?

A: When I turn on my lights and sirens, the defendant runs across the street towards the bus stop and he puts his hand up in a jabbing motion towards the people at the bus stop. And I think during -- like that took me out of my -- my thinking completely because it was something that, you know, who would do that?

Day 2 TR 228:19-25; 229:1-2 (Baca)

JS's unpredictable decision to run to the bus stop and try to stab RB was an independent, intervening cause of the need to deploy deadly force. It evolved swiftly into the sole cause of what then became a clear and immediate need to resort to deadly force. There is simply no basis in either legal causation theory or logic to link the need for deadly force to any alleged failure to plan for JS's apprehension before he became unforeseeably violent towards – from the officers' perspective – a complete stranger at a bus stop that offered JS no refuge from pursuit.

Absent either a logical or a legally sound causation connection, the deadly force event should have been analyzed as a stand-alone occurrence under SOP 2.52.6.B.1c, only. As set forth below, when analyzed as the stand-alone event that it was, Officer Baca's and Sargeant Johnson's use of deadly force as to both gunfire volleys fully conformed to APD policy.

B. SOP 2.52.6.B.1c analysis – this section is the heart of these consolidated cases as it is the basis for Baca's and Johnson's termination. I have multiple concerns regarding how it was applied. I ultimately conclude that it was not violated by either officer in either volley of shots that were fired at JS.

Before discussing the two volleys of fire, an overarching concern arises from the wording of the final decision to discipline these two officers. Both letters

(COA Exs. 60 & 61) start with an underlined and bolded paragraph stating that “[o]fficers must be certain that an individual is armed with a deadly weapon before utilizing deadly force.” The emphasized use of the word “certain” in these two letters is highly problematic. ‘Certainty’ is neither the SOP nor the legal standard. The standard in the applicable SOP and as a matter of law is one of objective reasonableness. 2.52.6.B.1.c.; see Day 1 TR 75:18-25; 77:2-7 (Dickinson testimony); *State v. Ellis*, 2008-NMSC-032, ¶ 26.

A gaping and dangerous chasm separates the concepts of ‘objective reasonableness’ and ‘certainty’. When confronted with deadly force, certainty is not only unrealistic but dangerous. An officer with an objectively reasonable belief that the person they are confronting is armed with a deadly weapon and poses a threat of death or serious physical injury who hesitates for lack of ‘certainty’ imperils his or her life and the lives and safety of others.

The facts of this case perfectly illustrate this distinction, as discussed below in more detail in the analysis of the second volley of shots that killed JS. Terminating these two officers for failing to meet a standard of ‘certainty’ is *per se* not just cause so long as their actions met the actual standard of objective reasonableness.⁶ On a global level, the misstated emphasis on certainty in these two termination letters broadcasts a message to all police officers that is not only legally wrong and contrary to policy, but that is also terribly dangerous.

1. Gunfire volley 1 - Also troubling are the conclusions drawn from review of the various OBRD videos respecting the two deadly force gunfire

⁶ By this I mean APD’s enhanced standard beyond *Graham v. Connor*, 490 U.S.386 (1989): objectively reasonable, necessary, and minimally necessary under the circumstances. SOP 2-52.C.4.

incidents. As to the first gunfire volley, it is inconceivable to me that anyone could conclude deadly force was unwarranted or out of policy. OBRD video shows JS approaching the blue-clad pedestrian, RB, right arm raised in a stabbing position with knife in hand. COA Ex. 4 at 23:56:00 (Cordova OBRD). This video actually shows JS making physical contact with RB at the time officers discharge the first volley. *Id.* at 23:56:02. Officer Baca testified:

[T]he defendant was running at the people in the bus stop with a knife in a jabbing motion. [W]e were not going to approach this man with anything else besides our guns.

Day 2 TR 229:12-15

I cannot envision a more textbook example of a situation where officers have an objectively reasonable belief that deadly force is not only minimally necessary, but the only available option in response to a situation where an individual who has already violently stabbed someone else that very night is now posing an imminent threat of death or serious physical injury to a second potential victim. That is exactly the situation seen on multiple OBRD video captures of the situation that resulted in the first volley of shots fired at JS. COA Ex. 3 at 23:56:02 (B. Johnson OBRD); COA Ex. 7 at 23:56:04 (Relaford OBRD); COA Ex. 4 at 23:56:02 (Cordova OBRD). JS's actions provoked a deadly force response. Officers had less than ten seconds to react. They had no choice but to react immediately and with deadly force.

Investigator Dickinson's report and testimony as to this first volley are inconsistent and reflect her own equivocation on this point. As to both Sergeant Johnson and Officer Baca, her analysis narrative of force applications 5 (Johnson), and 6 (Baca), states that the force used against JS was minimal,

objectively reasonable, and necessary to protect the bystander from JS, yet she curiously failed to check those corresponding boxes. COA Ex. 17 at p. 44-45. Contrary to her report narrative (and apparently based on her "totality of the circumstances" analysis), investigator Dickinson testified that none of the shots fired by Baca or Johnson met the minimal, reasonable, or necessary standard of the applicable SOP. Day 1 TR 83:5-13; 85:14-20; 194:12-20. Yet she admitted that at the time of the first volley, JS posed a threat and a deadly threat to the bystander. Day 1 TR 114:23-25; 115:1-3; 164:24-25; 165:1-2; 173:3-13; 180:3-5.

These are irreconcilable inconsistencies. The evidence clearly shows, and I conclude, that Officer Baca and Sargeant Johnson both had an objectively reasonable belief that JS posed a threat of death or serious physical injury to the bystander at the time his actions forced them to fire the first volley. Their use of force in the first volley did not violate §2.52.6.B.1.c. Investigator Dickinson's own inconsistent conclusions as to this first volley are perhaps the best proof that this alleged policy violation was not established, much less by a preponderance of evidence. The only "totality of circumstances" that existed was the one these officers faced in the ten-second timeframe leading up to the first gunfire volley. They should have been regarded by impartial reviewers as a textbook example of §2.52.4.C1-4 circumstances giving rise to the clearest possible and most immediate need to deploy deadly force.

2. Gunfire volley 2 - As to the second volley, investigator Dickinson testified as follows:

Q: [U]nder APD standards, what is expected of an officer after having engaged in use of force the first time?

A: Well, I mean, policy says that they need to be continually reassessing their levels of force and based upon the actions of what they are observing. At this point, [JS] was down. [The bystander] was down. [JS] was moving his arms around, then reached behind him and dropped the knife. [JS] eventually puts his hands on the ground. Both hands are clear. (Inaudible) he begins to (inaudible) (inaudible). When Officer Baca fired -- fired the second volley or round, the second -- she fired one round during the second volley. In that time, [JS] was not an imminent threat. He was not actively resisting. He did not pose a threat to anybody.

Day 1 TR 108:19-25; TR 109:1-9.

Investigator Dickinson testified that the same analysis applied to Sergeant Johnson. Day 1 TR 123:1-6; 125:5-11.

To even review investigator Dickinson's conclusions, I had to slow the OBRD videos down to one quarter of their normal speed. Of course, this is not an option that officers on-scene that night would have had in deciding what split-second decisions to make or how to react. At 23:56:34 on Officer Baca's OBRD one can see that JS's right and left hands are indeed both empty. COA Ex. 8. However, at 23:56:36 -- just two seconds later -- JS rolls suddenly to his left and appears to place both hands in front of him in an attempt to get back up. *Id.* At this point, his body is blocking Baca's OBRD (and presumably personal), view of his hands; right more so than left. *Id.* Recall that JS is apparently right-handed or at least is seen wielding the knife in that hand at all material times. Recall also that it is undisputed he dropped the knife behind his head. COA Ex. 17 at p. 28 of 54 (investigator Dickinson Narrative Report). That knife would therefore have been within easy reach of his right hand when he rolled over to face it.

Sergeant Johnson's OBRD is similar: at 23:56:35-36 the view of JS's right hand is blocked from view by his body. COA Ex. 3. Officer Cordova's OBRD

provides a slightly better view as he is a few steps further to the south, but even that video does not clearly establish that JS did not retrieve the knife, and JS's body does not block Cordova's view to the same extent as it does the views of Baca and Johnson, positioned some feet further to the north. COA Ex. 4 at 23:56:33-36. Yet even Officer Cordova stated that he believed JS still had the knife in his right hand at the time of the second volley. COA Ex. 23, p. 19, L 792-804; p. 20, L821-828.

The critical moments of this second volley unfold within the space of 2-3 seconds. What are officer Baca and Sargeant Johnson expected to assume under such split-second circumstances? I view the policy answer as crystal clear: the 2-52-4.C.5 obligation to constantly reassess the threat situation that investigator Dickinson referenced in her testimony dictates that the only safe course of action and therefore the only objectively reasonable one, was to assume that when JS rolled over he could have retrieved the knife and he could once again be poised to spring with it at the bystander.

SOP 2.52.6.B.1c does not say "unless the officer is certain"... . As discussed above a 'certainty' standard imperils life and safety to a degree that must have been rejected as unacceptable by those who instead drafted an objectively reasonable standard into this SOP. Officer Baca and Sargeant Johnson acted not only on their split-second personal perceptions but also in a way that OBRD evidence proves was the only objectively reasonable reaction.

Even more troublesome to me is how investigator Dickinson definitively concluded that Officer Baca and Sargeant Johnson should have known that JS

no longer posed an armed threat. Both Officer Baca and Sergeant Johnson testified that they saw the knife in JS's hand at the time of the second volley:

A: He was still a deadly threat to me at the time, okay? Still had a knife in his hands. He wasn't following our commands, wasn't dropping the knife. And that's what I perceived at the time.
Day 2 TR 187:13-16 (Johnson)

A: I fired my duty weapon when he reanimated while he had the knife in his hands.

Q: When you say reanimated, I think what you described is he got on his hands and knees, correct?

A: Yes. To get back up again.
Day 2 TR 188:2-6 (Johnson)

A: And once he was on the ground, he was moving his arms like this. He had the knife in his hand. He had not dropped the knife. [RB] was really close to him to where he could just reach him.
Day 2 TR 233:25; 234:1-3 (Baca)

Q: And did you ever see him from your perspective of where you were standing drop that knife?

A: He did not drop the knife at all
Day 2 TR 235:15-17 (Baca)

A: He still had the knife in his hand. He hadn't dropped the knife. Next, he makes a movement where he's on his right side and he goes over to his left side, as if he's trying to -- as if he's getting up with the knife still in his hand. And that's when I shoot again.

Q. Do you believe from your perspective where you were standing he still had that knife?

A: Yes.
Day 2 TR 236:2-3; 13-16; 20-22

Both officers testified credibly and I have no reason to doubt the sincerity of their respective beliefs on this point. Investigator Dickinson's Narrative Report identified no officer credibility issues or material discrepancies. COA Ex. 17, p.

50/54. Sargeant Harp also testified that the investigation found nothing wrong with the officers' perceptions. Day 1 TR 233:25; 234: 1-5.

However, even if we dismiss Baca's, Johnson's, and Cordova's consistent perceptions on this point as either flawed or simply self-serving, the objective OBRD videos simply do not support investigator Dickinson's conclusion. The objectively reasonable conclusion to be drawn from Baca's and Johnson's OBRDs is that in the 2-3 seconds they had to reassess and react to JS's sudden reanimation, they assumed he retrieved the knife because 1) he had violently stabbed someone else mere hours before; 2) twenty seconds earlier he had tried to stab RB; and 3) his body blocked the OBRD view (and thus presumably their personal views), of his right hand.

If "totality of the circumstances" is indeed the bellwether of objectively reasonable conduct then how is this repeated sequence of violent behavior not an entirely prudent basis from which to assume the worst of JS? The only safe and objectively reasonable assumption to make in the seconds they had to react was that JS had retrieved his knife and was poised to spring in a renewed attack.⁷ Arguably when it was most applicable to IAFD's deadly force analysis,

⁷ The City's renewed motion to strike Grievants' expert is denied as moot: I accept and apply APD's enhanced use of deadly force requirements in this opinion so I need not consider testimony, expert or otherwise, on applicable use of force standards. Likewise, psychologist expert testimony (TR 3, 27:18-25; 28:4-7), that the officers may not have had time to assess whether JS was still armed when they reacted with the second volley is irrelevant. As set forth herein, all the officers still perceived that JS was armed, and their perceptions were not challenged. Moreover, the OBRD evidence shows that Officer Baca and Acting Sargeant Johnson would likely not have been able to see JS's right hand in the 2-3 seconds they had to react to his sudden "reanimation", such that they likely had to make assumptions rather than rely on any subjective perceptions, and I deem those assumptions to have been objectively reasonable. For all of these reasons, human reaction time, while interesting, is essentially irrelevant.

the totality of these crucial, split-second circumstances goes entirely unmentioned in the IAFD investigation and un-raised at the hearing.

I conclude from the foregoing that the force used against JS in the second volley was also objectively reasonable, minimal under the circumstances, and fairly indicated by both the stated officer perceptions and the objective OBRD evidence to be necessary to protect the bystander from a second attempted knife attack. Officer Baca's and Sargeant Johnson's use of force in the second volley did not violate §2.52.6.B.1.c. The "totality of circumstances" that existed in the two to three second timeframe giving rise to gunfire volley number two not only met all of the criteria of §2.52.4.C1-5, they appear to me to be a textbook example of how an officer should reassess the risks associated with a non-compliant, known violent attacker with potentially renewed access to a deadly weapon. Any other assumption would be irresponsible and dangerous.

C. Other alleged SOP violations

For all of the foregoing reasons, this deadly force incident was a sudden, stand-alone event that should have been analyzed as such. Analyzed independently as set forth above, use of deadly force was entirely appropriate, within policy, and not even a close call under the circumstances. Officers Baca and Johnson reacted appropriately as they were trained to do, to prevent an imminent two-fold threat that JS would stab the bystander RB. The IAFD inquiry should have ended there, and exonerated them.

Given this conclusion, it is mostly unnecessary to address ancillary charges having to do with the alleged failure to make a plan, failure to reassess use of force levels, failure to discuss force arrays, failure to properly supervise, or the failure to have available less lethal means of control and restraint.⁸ As use of deadly force in both volleys that night was within policy, these critiques are almost entirely academic. Nevertheless, in the interest of thoroughness and because the analysis further illustrates the fallacy of linking prior actions and events to the independent, intervening criminal act that gave rise to deadly force, I review the other alleged policy violations.

1. SOP 2.52.5.B.4 – this says that officers “shall take reasonable steps under the circumstances ... to avoid unnecessary risks”. The risk identified in connection with this matter was the injuries sustained by two bystanders. However, at least as to the first gunfire volley when it appears most likely that shots fired by Baca or Johnson may have struck one or the other of the bystanders,⁹ investigator Dickinson's force report concluded that the deadly force used by Sargeant Johnson and Officer Baca against JS was minimal, objectively reasonable, and necessary to protect bystander, RB. COA Ex. 17 at p. 44-45. Additionally, Officer Baca's job aid disciplinary action document acknowledges that “[o]fficers perceived that [JS] might stab the bystanders and opened fire on [JS].” Ex. 32, unnumbered p. 3 (discussion of alleged 2.52.5.B.4

⁸ I say “mostly” because evidence sustains suspensions for failure to have less-lethal weapons systems in their possession that night, although those systems were irrelevant to the deadly force situation.

⁹ No forensic evidence ever established that either bystander was hit by bullets fired by either Baca or Johnson. Day 1 TR 143:7-24.

policy violation). Although inconsistent with City witness testimony at the hearing, this documentary evidence provides additional support for my conclusion that the use of deadly force - calculated to prevent JS from stabbing the bystander - was called for and warranted under §2.52.6.B.1.c. Investigator Dickinson admitted as much on direct examination:

Q: [D]id you evaluate whether or not Baca had perceived a threat when she initially shot [JS]?

A: Yes. And I would say there was a threat. When the first rounds fired by the first officers on scene, there was a threat.

Day 1 TR 114:23-25; 115:1-3.

The risks associated with this use of deadly force were not unnecessary risks. They were risks that were necessary and incidental to a situation that called for the use of deadly force even though City witnesses equivocated on this point at the hearing.

Section 2.52.5.B.4 never applied to this case. Officers are not required to take reasonable steps to avoid necessary risks, only unnecessary ones. As use of deadly force was justified, the risk of injury to bystanders was necessary. A policy having to do with avoiding unnecessary risks to bystanders is *per se* inapplicable. Although neither party covered this important point in sufficient detail at the hearing, the City's witness, Sargeant Harp, acknowledged it when he confirmed that injuries to bystanders can be within policy:

Q. Are there any scenarios in which shooting [innocent] bystanders would be within SOP policies or within use of force -- allowable use of force of SOP's by APD?

A. That's a -- that's a hard question. So I would say that it may if the use of force was found to be reasonable.

Day 1 TR 221:9-21.

Use of deadly force in this incident was reasonable. SOP 2.52.5.B.4 did not apply to the situation JS spontaneously created that night and it should not have been considered in any disciplinary decisions pertaining to Officer Baca or Sargeant Johnson.

The unfortunate irony of this case is that the risk which befell these two bystanders that night became necessary for their very protection. It was however, not the actions of either Officer Baca or Sargeant Johnson that gave rise to that necessary risk. JS alone set in motion the whole situation that put bystanders at risk by attacking one of them with a knife.

2. SOP 2.52.5.B.5.a – This policy covers “potentially violent encounters” but its main goal - to deter officers from resolving incidents or situations “independently” – is inapplicable. Also, by its own terms, situations involving the threat of death or serious physical injury are outside the scope of the policy.

Respecting Officer Baca and Acting Sargeant Johnson, this policy should not have been considered. The evidence fails to show that either Officer Baca or Sargeant Johnson sought to resolve anything independently that night. As discussed in more detail below regarding the allegation that there was no plan, Officer Baca coordinated her approach to JS with two other officers. Officer Baca then acted in concert with officers Relaford and Cordova after she saw Sargeant Johnson roll up on-scene. There is no evidence that Officer Baca sought to apprehend JS “independently”. Thereafter, the new deadly threat situation unfolded and all evidence shows that it was resolved by officers in concert, not independently.

Also, when JS elected to run towards the bus stop and attempted to stab RB, the situation escalated into one involving the threat of death or serious physical injury. That triggered the “unless” clause of this policy authorizing any officer, including either Officer Baca or Sergeant Johnson, to resolve the situation independently. That did not happen, but the ‘unless’ clause of this policy recognizes that officers unlucky enough to confront a deadly force situation alone may have to resolve it without assistance or backup. For both of these reasons, §2.52.5.B.5.a simply should not have been considered in connection with this incident.

3. SOP 2.52.5.B.5 – Paradoxically, this alleged violation was administratively closed and no action taken against either Baca or Johnson under this policy because it was deemed to be “duplicative” of SOP 2.52.5.B.5.a. COA Ex. 36 at p. 2; Ex. 38 at p. 2; see Day 1 TR 90:10. In fact, this section is not duplicative of subsection 5.a. Section 5 covers planning, de-escalation, and force arrays. As discussed above, subsection 5.a. deals with the completely separate topic of resolving situations independently. Since it was administratively closed, the section 2.52.5.B.5 “failure to plan” allegation should not have factored into any disciplinary decisions against either officer, yet it was the foundation throughout the hearing for the City’s argument that they had the power to alter the future through actions they allegedly failed to take.

Although irrelevant to analysis of use of deadly force for the multiple reasons already discussed, I address the ‘failure to plan’ allegation for two reasons: first, because it is cited in the final decision to discipline both officers despite the fact that it was dismissed. COA Ex. 60 at p. 2; Ex. 61 at p. 2. Second,

because the alleged failure to plan was referenced repeatedly in testimony at the hearing as a basis for concluding that the so-called 'totality of circumstances' did not warrant use of deadly force and supported termination. See section II.A, above. Officer Baca in particular was criticized for not making a plan within the asserted two minutes she had on-scene before approaching JS. See e.g., Ex. 36, p. 1.

The IAFD investigation concluded that officers had time to make a plan to approach JS based on two assertions: first, that JS initially posed no threat to anyone as he paced the median. COA Ex. 17, p. 19/54, L 113-115 68-170. Second, because the video evidence showed that "at no point did JS attempt to flee the scene by running or leave the general area he was observed at." COA Ex. 17, p. 20/54, L 168-170.

These statements are problematic; the first for its under-inclusiveness, the second for its vague and misleading phraseology. JS's initial non-confrontational behavior as he meandered up and down the median was not the officers' concern that night. The concern was that he knew he was under surveillance by police and he soon began acting in a way that led Officer Baca to think he was planning to run.

People who have just committed a crime are known to flee on foot. Day 1 TR 241:25; 242:1-2 (Sargeant Harp). Both Officer Baca and Sargeant Johnson told IAFD they thought JS was going to try to run away from them and that a foot chase might ensue. COA Ex. 25 at p. 9, L 376-377; p. 11, L 442-446 & 464-468; p. 13, L: 515-518; p. 14, L 588-591 (Baca IAFD interview); COA Ex. 24 at p. 9, L 353-355 & 365-367; p. 10, L: 416-417 (Johnson IAFD interview); see also subsection II.A.1,

above at p. 11 (Baca testimony). Thus, it was not JS's initial behavior in the median that begged for formulation of a plan but the immediately ensuing perception that he was about to try to run away.

The video evidence also simply does not support this narrative report implication that JS did not appear to be contemplating flight. The tow truck dashcam captures JS pacing the median from about 23:54:33 to about 23:55:10. COA Ex. 2. At 23:55:10 the tow truck dashcam shows JS begin to move steadily north on the median as Officers Relaford and Cordova begin walking towards him from the south. *Id.* At 23:55:26 JS stops and looks back and then begins to pick up his pace to the north on the median, presumably in response to seeing the approach of Cordova and Relaford. *Id.*

At the time officers Relaford and Cordova began to mobilize towards him on foot, JS is seen to begin moving northbound on the Louisiana Boulevard median at an increasing pace. The Lobos Tow Truck driver described his pace as a "quick jog". COA Ex. 10, bates No. 000021, first paragraph (Tod Babcock report of tow truck driver interview). The tow truck video shows JS begins walking northbound on the median at 23:55:10; the same time that officers Relaford and Cordova begin walking north through the Burger King parking lot. COA Ex. 2. At 23:55:15 officer Baca begins pulling forward westbound on Lomas towards the intersection. *Id.* At 23:55:26 JS stops and looks back toward the south then picks up his pace northbound on the median. *Id.* At 23:55:33 JS stops again and looks back south and again turns and keeps moving north. *Id.*

The plan Commander Waite said he would have expected to see was "I don't mean a 15-minute discussion with a full operational plan. I mean a rapid

discussion about how we're going to approach the guy." Day 2 TR 63:12-13. The evidence showed that Baca, Relaford, and Cordova made exactly such a plan, based on their concern that JS was going to try to escape on foot. Day 2 TR 226-228; see COA Ex. 17 at p. 21 of 54, L 212-213. Baca spent time with Rutherford and Cordova making sure that JS was the McDonalds suspect, asked them if they were ready to move up, saw Sargeant Johnson arrive on scene, and then pulled up towards the suspect in her unit. COA Ex. 25 at p. 8, L 336-338; p. 9, L 357-358 & 364-378; p. 10 L 393-397; p. 14, L 587-591.

Additionally, Baca, Relaford, and Cordova would only have had time to make a plan after the three of them were together on-scene. OBRD video shows Relaford arriving at 23:53:09. COA Ex. 7 (Relaford OBRD). Officer Cordova pulls up behind Relaford at 23:54:10. COA Ex. 4 (Cordova OBRD). Thus, after Cordova's arrival these three officers had just about one minute to decide how to approach him before JS – who appears young and fit in the videos - begins to move purposely north and then begins to pick up his pace after clearly perceiving himself to be under surveillance.

There is a reason SOP 2.52.5.B.5 commences with the phrase "when feasible". Commander Waite's testimony supports the view that what time is reasonable to devote to planning for a situation under this policy depends on the situation itself: the more dynamic and exigent the circumstances, the less time there will necessarily be to plan a reactive strategy.

Under circumstances where JS knew he had been spotted and was moving steadily north on foot, I conclude that it was reasonable for Baca, Relaford, and Cordova to formulate the simple plan they did in the minute or so

they had together: that Baca would try to cut off JS from moving north by driving past him and u-turning to approach him from the north while Relaford and Cordova approached him on foot. Time simply did not permit the development of a more elaborate plan.

Coming full circle however, the all-encompassing point is that given JS's sudden and unpredictable bus stop attack, it was wrong and utterly conjectural to theorize in hindsight that any "plan", no matter how well thought out or executed, would have ultimately made any difference. Even if it had not been administratively dismissed, SOP 2.52.B.5 went by the wayside once JS ran towards bystanders at the bus stop and attempted to stab one of them. Other than taking place close in time, the events are unrelated. JS's actions alone initiated the bus stop assault.

For multiple reasons, SOP 2.52.B.5 simply should not have been considered in the decision to terminate either Officer Baca or Sargeant Johnson. Even if considered however, the evidence shows these officers made as much of a plan as they could in the little time they had available to thwart JS's then-perceived plan to flee northwards on foot. In sum, although the failure to plan allegation was dismissed and was utterly irrelevant both procedurally and substantively, the officers made exactly the kind of plan Commander Waite said he would expect to see under the circumstances.

4. SOP 3.14.4.A.1.g - This alleged violation was directed at Sargeant Johnson. It would not have warranted termination even if proven, but I conclude that it should not have been applied for any reason. First, it should be

noted that Officer Johnson had only been an acting Sargeant/supervisor for about six weeks at the time of this incident. Day 2 TR 147:12-24. The evidence showed the role was thrust upon her because her Sargeant went on family medical leave and a supervisor was needed "to keep up with the paperwork". *Id.*; see also Day 2 TR 89:12-23 (she was "voluntold" to assume the position – Sean Waite testimony). She was basically supervisor over only one other person – Violeta Baca – her former partner. *Id.* Her training to become an acting supervisor consisted of a single, two-week course. Day 2 TR 148:2-13. Thus, on the night of this incident, minimally trained and inexperienced Officer Johnson occupied nothing more than a token placeholder supervisory role over one other on-scene person.

The principal criticism leveled at Acting Sargeant Johnson under this policy was that she should have slowed the situation down. Day 1 TR 122:19-23 (Investigator Dickinson); Day 2 TR 55:2-3 (Sean Waite). She had an obligation to control the scene and slow things down as much as possible. Day 2 TR 64:19-25; 65:1-6 (Waite). She should have instructed officers to wait for her arrival. Day 2 TR 62:10-15 (Waite).

The problem is that Acting Sargeant Johnson had no more ability to control the speed of the situation which unfolded that night than did any other officer on-scene. This was not some hours-long SWAT standoff. The only person in control of the speed of that night's events was JS. Officer Baca testified that Acting Sargeant Johnson may have radioed "wait for me",¹⁰ but even if she did, JS was not going to obey that instruction. As discussed above, once JS

¹⁰ Day 2 TR 227:9.

perceived himself to be the subject of police surveillance, he began to move northwards along the median and the perception was that he was about to run. Officer Johnson had no ability to influence the speed at which this transpired, much less to slow it down. Had officers hesitated and JS escaped into the maze of apartments to the northeast, the criticism would have been that nobody acted quickly enough.

Additionally, whether instructed to or not, Officer Baca did wait until she saw Officer Johnson arriving. By that time cutting off JS's perceived plan to escape to the north was seen as mission-critical. Day 2 TR 227:6-20. By the time of Johnson's arrival on-scene, this was mere seconds away from already being a deadly force incident. Even indulging the City's claim that Johnson was an official, *de facto* supervisor on this scene, there is simply no evidentiary basis for concluding that she violated any of the general, aspirational rules or responsibilities set forth in SOP 3-14.A.1.g, much less that they had anything to do with the deadly force event that unfolded beyond the control of everyone but JS.

5. **SOP 2.2.6.A.4.e** - Both Officer Baca and Acting Sargeant Johnson admitted that they did not have their assigned less-lethal weapon system with them at the time of this incident. Day 2 TR 180:6-19 (Johnson); Day 2 TR 241:15-23 (Baca). For reasons made abundantly clear above, this violation is irrelevant to the situation that developed with JS. Nevertheless, the violation established by the Officers' own admissions and therefore by a preponderance of evidence supports the respective suspensions; Baca for forty hours, and Johnson for eight.

III. THE GORILLA IN THE ROOM

Last but by far the most troubling of all, the multiple shortcomings in this investigation and resulting discipline are so at odds with the high level of expertise and long experience of the involved reviewing personnel, that they give rise to inevitable suspicions regarding motive. Specifically, I cannot help but wonder whether this investigation and the resulting discipline was unfairly influenced by APD's global goal of freeing itself from the Department of Justice consent decree ball and chain. In a previous case, Chief Medina testified that DOJ exercises considerable oversight of APD as a result of the consent decree, and those pressures are focused specifically on use of force. See *In the Matter of Justin Lee*, No. PB 20-09 - TR2 8:1-6; 25:13-17 (1/25/2021). In this case, Commander Waite explained that APD's last obstacle to petitioning the federal court for release from the consent decree is another year of operational compliance. Day 2 TR 22:3-25.

Were these officers sacrificed on the DOJ consent decree altar to slake the thirst of its "operational compliance" aspirations? Was Superintendent Garcia's errant choice of the word "certain" in Officer Baca's and Sergeant Johnson's termination letters written for their consumption or to appease DOJ overseers? In an outcome-neutral investigation of such a high-profile event, I would have expected to see either a starting presumption of no wrongdoing on the part of involved officers or at least a conclusion-neutral approach such as one sees in, for example, fire cause and origin investigations. Instead, this investigation seemed to first shop departmental SOPs for potential policy

violations and then to shoehorn the facts into sustaining them under a grossly flawed "totality of circumstances" methodology.

Upper management sets the tone for the whole of any organization. In my view, APD top brass has a duty to send a consistent and unambiguous message to foot soldiers like officers Baca and Johnson that so long as they follow the rules, they can rely on their superiors to have their backs, especially when they are forced to make split-second decisions in the face of danger. That duty to the troops should always have priority over even paramount policy objectives.

Instead, the message this investigation and resulting unfair discipline sends to those who patrol the mean night streets of Albuquerque so that the rest of us can sleep in the comfort and safety of warm beds, is that they are on their own. Their actions and decisions will be judged against impossible and dangerous standards arbitrarily applied in the worst of hindsight speculation. The esprit de corps so essential to a well-run police force with its important public safety mission is undermined, perhaps irreparably, when its boots on the ground perceive they are merely the expendable pawns in a chessboard manipulation that is only ostensibly tied to actual job performance and operating standards.

To be clear, I merely suspect that this is what may have occurred here. The City, not I, raised the "gorilla in the room" backdrop to this case. Day 2 TR 23:23-25. I do not need to know if the drive to achieve DOJ compliance played a role in this investigation. I decline to add to the runaway speculation that is already its crowning hallmark. It is enough that those reviewing this report and recommendation will know. Perhaps the solitary upside of this terrible event is

the opportunity it may now afford for some soul-searching reconsideration of the extent to which this 'gorilla' may have battered IAFD disciplinary decisions, and even whether it should have been unleashed to rampage through that process in the first place.

IV. RECOMMENDED DECISION

Nobody is going to be awarded medals for a horrific incident resulting in two bystanders injured by police gunfire. But that does not mean that either Officer Baca or Acting Sargeant Johnson are to blame for the outcomes that night. Nor does it mean that these officers deserved to be terminated or their reputations tarnished for what the objective evidence shows was performance of their duty, unpleasant though it might have been, according to their training and the extreme exigencies and split-second judgments forced upon them.

For all of the foregoing reasons, and as set forth in the findings of fact and conclusions of law set forth in attachment A to this Report, the Hearing Officer recommends that the Board reverse the terminations of Violeta Baca and Brenda Johnson as unsupported by just cause, reinstate them to their positions retroactive to the dates of their respective terminations, and award them such back pay and other damages as may be proven and warranted under the circumstances. The Hearing Officer recommends that the Board uphold the lesser-included disciplinary suspensions of Violeta Baca and Brenda Johnson for failure to have with them their assigned less-lethal weapons systems as supported by just cause. The Hearing Officer recommends that the Board uphold Eric

Wilensky's termination on procedural grounds. A proposed order for the Board's consideration reflecting these recommendations is attachment B to this Report.

Respectfully Submitted,

RIPLEY B. HARWOOD, P.C.

/s/ Rip Harwood

By:

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BEFORE THE CITY OF ALBUQUERQUE
PERSONNEL BOARD

IN THE MATTERS OF ERIC WILENSKY,
VIOLETA BACA and BRENDA JOHNSON,
Former Employees of the City of Albuquerque,

PB 23-22, 23-23, 23-24

Grievants.

HEARING OFFICER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW¹¹

A. FINDINGS OF FACT

1. Just short of midnight on June 29, 2023, a deadly force incident unfolded at the intersection of Lomas and Louisiana Boulevards in southeast Albuquerque involving a suspect referred to as "JS".
2. JS was shot to death in the incident.
3. Two bystanders were accidentally struck and injured by police bullets.
4. No forensic evidence ever established that either Officer Baca or Acting Sargeant Johnson shot either of the bystanders. Day 1 TR 143:7-24.
5. JS was a suspect in a nearby violent stabbing incident resulting in serious injury that had occurred a couple of hours prior to the deadly force incident. Day 1 TR 55:3-12.
6. Officer Violeta Baca was the first to arrive on-scene. She spotted JS and he saw her. JS had a knife in his right hand. COA Ex.1 at p. 6/21 (CADs Report 23:49:53 entry); see Day 1 TR 221:23-25; 222:1; 223:16-17 (Baca).

¹¹ Findings and conclusions without specific citation references are either undisputed or supported by citations in the Hearing Officer's accompanying Report.

7. Officer Relaford arrived and he conferred with Officer Baca and they agreed that JS was the McDonalds stabbing suspect. Day 2 TR 225:7 (Baca).

8. The plan Commander Waite said he would have expected to see was not a 15-minute discussion with a full operational plan but a rapid discussion about how officers were going to approach JS. Day 2 TR 63:12-13.

9. After Officer Cordova's arrival on scene, he, Baca, and Relaford had about one minute to decide how to approach JS before JS begins to move purposely north and begins to pick up his pace after clearly perceiving himself to be under surveillance. COA Ex. 7 (Relaford OBRD ~23:53:09); COA Ex. 4 (Cordova OBRD ~ 23:54:10); COA Ex. 2 (Lobos Towing dashcam ~ 23:55:10).

10. Baca, Relaford, and Cordova discussed how they were going to approach JS based on their concern that he was going to try to escape on foot. Day 2 TR 226-228 (Baca); see COA Ex. 17 at p. 21 of 54, L 212-213.

11. Baca spent time with Rutherford and Cordova making sure that JS was the McDonalds suspect, asked them if they were ready to move up, saw Sargeant Johnson arrive on scene, and then pulled up towards the suspect in her unit. COA Ex. 25 at p. 8, L 336-338; p. 9, L 357-358 & 364-378; p. 10 L 393-397; p. 14, L 587-591.

12. Officers Baca, Relaford, and Cordova made a plan to approach JS. Officer Baca would approach him in her unit while Officers Relaford and Cordova closed in on him on foot. Day 2 TR 226-228; see COA Ex. 17 at p. 21 of 54, L 212-213; COA Ex. 25 at p. 8, L 336-338; p. 9, L 357-358 & 364-378; p. 10 L 393-397; p. 14, L 587-591.

13. At 23:54:37, Officer Relaford confirms with Baca that she intends to move up on the suspect in her patrol car, then notes he and Cordova will proceed on foot. See Day 2 TR 227 (testimony of Officer Baca); *see also*, Day 2 TR 35-36 (testimony of Comdr. Waite); COA Ex. 7, at 1:32–1:52 (OBRD Officer Relaford, 2nd track).

14. JS began moving steadily north along the Louisiana Boulevard center median. COA Ex. 2 (Lobos Towing dashcam ~ 23:55:10).

15. Officers were concerned that JS was planning to flee to the north on foot. Day 1 TR 226:8-14; 227:16-20 (Baca); COA Ex. 25 at p. 9, L 376-377; p. 11, L 442-446 & 464-468; p. 13, L: 515-518; p. 14, L 588-591 (Baca IAFD interview); COA Ex. 24 at p. 9, L 353-355 & 365-367; p. 10, L: 416-417 (Johnson IAFD interview).

16. At 23:55:35 Officer Baca turns north onto Louisiana and drives towards JS. COA Ex. 2 (tow truck dashcam).

17. Acting Sargeant Brenda Johnson arrived on-scene in her unit at about 23:55:53. COA Ex. 3 (B. Johnson OBRD ~23:55:53).

18. Officers Relaford and Cordova approached JS on foot. COA Ex. 2 (tow truck dashcam ~23:55:47).

19. As Officer Baca neared JS, he changed direction and ran west towards a bus stop. COA Ex. 2 (tow truck dashcam ~23:55:47).

20. Evidence suggested that JS may have been acquainted with bus stop bystander, RB. COA Ex. 10, at Bates 000022 (Tod Babcock interview).

21. There was no evidence or claim that either Officer Baca or Acting Sargeant Johnson had any knowledge that JS may have been acquainted with bus stop bystander, RB.

22. Neither Officer Baca nor Acting Sargeant Johnson had any reason to anticipate that JS would run towards bystanders at the bus stop at the time they approached him. COA Ex. 25, p. 14, L 587-599 (Baca statement); Day 2 TR 161:8-10 (Johnson testimony), Day 2 TR 228:19-25; 229:1-2 (Baca).

23. JS's running towards a bystander at the bus stop was a cause which interrupted the natural sequence of the antecedent events that suggested he would attempt to run away, and produced a different result that could not have been reasonably foreseen.

24. JS's run towards bystander RB at the bus stop took about ten seconds.

25. JS ignored repeated police commands to drop the knife.

26. JS ran at RB with his knife raised in his right hand in a stabbing position.

27. JS actually made physical contact with RB as police fired their first volley. COA Ex. 4, 23:56:00-23:56:07 (Officer Cordova OBRD).

28. Officer Baca and Acting Sargeant Johnson shot at JS to prevent him from stabbing RB. Day 2 TR 229:12-15 (Baca).

29. Officer Baca's one-handed firing of her weapon was contrary to APD training. Day 1 TR 103-104, (investigator Dickinson).

30. Officer Baca's one-handed firing of her weapon in the first volley, although contrary to APD training, was not a cited basis for termination or any other discipline.

31. After the first volley of shots, JS fell to the ground and lay there for about twenty seconds with his head facing away from Officer Baca and Acting Sargeant Johnson. (various OBRDs).

32. After the first volley of shots and while lying on the ground, JS dropped his knife behind his head. Day 1 TR 124:10-22 (Dickinson); COA Ex. 17 at p. 29 of 54 (IAFD Narrative Report).

33. About twenty seconds after the first volley of shots and while lying on the ground, JS suddenly rolled to his left and appeared to be springing back up. COA Ex. 4 - 23:56:32-33 (Cordova OBRD).

34. As JS rolled to his left, his body blocked Officer Baca's and Acting Sargeant Johnson's OBRD views of his right hand. COA Ex. 3 - 23:56:35-36 (Johnson OBRD); COA Ex. 8 - 23:56:36 (Baca OBRD).

35. When JS rolled to his left, the knife he had dropped behind his head would have been within reach of his right hand. COA Ex. 3 - 23:56:35-36 (Johnson OBRD); COA Ex. 8 - 23:56:36 (Baca OBRD), COA Ex. 4 - 23:56:32-33 (Cordova OBRD).

36. Officer Baca and Acting Sargeant Johnson had between two to three seconds to decide whether or not JS had rearmed himself with the knife. COA Ex. 3 - 23:56:35-36 (Johnson OBRD); COA Ex. 8 - 23:56:36 (Baca OBRD).

37. Officer Baca and Acting Sargeant Johnson both believed JS to be armed with the knife when they fired the second volley that killed JS. H.O. Report, p. 20-21.

38. The sincerity of Officer Baca's and Acting Sargeant Johnson's beliefs that JS was armed with the knife when they fired the second volley that

killed JS was not challenged or questioned. COA Ex. 17, p. 50/54 (investigator Dickinson), Day 1 TR 233:25; 234: 1-5 (Sargeant Harp).

39. The investigation revealed that the total rounds fired throughout the course of the incident were the following: Acting Sargeant Johnson - 7 rounds; Officer Baca - 4 rounds.

40. The investigators' analysis separated the two separate volleys of shots. Initially there were 6 rounds fired by Acting Sergeant Johnson, and then she fired 1 round in the second volley. Officer Baca fired 3 rounds initially and 1 for the second volley.

41. Application 5 of Investigator Dickinson's Narrative Report discussed the Level 3 Firearm Discharge, Handgun, by Acting Sergeant Johnson in the first volley of shots fired; Application 6 discussed the Level 3 Firearm Discharge, Handgun, by Baca on the first volley of shots. Day 1 TR 83-86, (Inv. Dickinson); see also, City's Ex.17, at 44-47.

42. As to both Sargeant Johnson and Officer Baca, investigator Dickinson's analysis narrative of force applications 5 (Johnson), and 6 (Baca), states that the force used against JS was minimal, objectively reasonable, and necessary to protect the bystander from JS, yet she failed to check those corresponding boxes. COA Ex. 17 at p. 44-45.

43. Investigator Dickinson concluded that at the time of the first volley, JS posed a threat and a deadly threat to the bystander. Day 1 TR 114:23-25; 115:1-3; 164:24-25; 165:1-2; 173:3-13; 180:3-5.

44. No evidence established that either Officer Baca or Acting Sargeant Johnson sought to resolve any potentially violent encounter with JS independently.

45. JS was solely in control of the timing of this incident such that Acting Sargeant Johnson had no opportunity to slow down the situation or otherwise alter its timing in any way.

46. Officer Baca did not have her assigned less-lethal weapon system with her at the time of this incident.

47. Acting Sargeant Johnson did not have her assigned less-lethal weapon system with her at the time of this incident.

48. At all times material hereto, Grievant Violeta Baca was an employee of the City of Albuquerque Police Department and subject to the City's Merit System Ordinance.

49. At all times material hereto, Grievant Brenda Johnson was an employee of the City of Albuquerque Police Department and subject to the City's Merit System Ordinance.

50. Baca and Johnson were both terminated by Notices of Final Action dated December 22, 2023, as a result of alleged work-related misconduct occurring on June 29, 2023.

51. Baca and Johnson timely appealed their discipline.

52. The Final Action to discipline Baca alleges that she violated APD Standard Operating Procedures 2.52.6.B.1, 2.52.5.B.4, 2.52.B.5.a, and 2.2.6.A.4.e.

53. The Final Action to discipline Johnson alleges that she violated APD Standard Operating Procedures 2.52.6.B.1, 2.52.5.B.4, 2.52.B.5.a, 3.14.4.A.1.g, and 2.2.6.A.4.e.

54. Alleged SOP violation 2-52-5-B-5 was administratively closed.

55. The incident giving rise to these allegations was recorded by multiple on body recording devices and a dash cam.

56. Officer Baca and Sargeant Johnson testified about the incident.

57. COA witnesses Tanya Livingston, Sean Waite, Christopher Harp, and Eric Garcia investigated or reviewed the investigation of the incident and testified to their findings and the reasoning for imposing termination.

58. The parties stipulated to the admission of COA Exhibits 1 through 76, and they were admitted into evidence and made a part of the record. Day 1 TR 34:20-22; 36:1-6.

59. No findings of fact set forth herein are based in whole or in part upon the testimony of either of the Grievants' two expert witnesses.

60. Eric Wilensky had actual notice of the date and time of the hearing through his legal counsel.

61. Eric Wilensky failed to appear at the hearing.

62. Eric Wilensky's termination is upheld on procedural grounds and the substantive merit of discipline imposed upon him was not reviewed or evaluated.

63. To the extent not expressly set forth herein, factual statements expressed in the Hearing Officer's accompanying Report are incorporated by reference as findings of fact.

B. CONCLUSIONS OF LAW

1. Jurisdiction is proper before the City of Albuquerque Personnel Board.

2. In an appeal of disciplinary action, the City has the burden of proving, by a preponderance of the evidence, that it had just cause for the discipline imposed. See City Personnel Board Rules of Procedure for Class I Grievance Hearings § 10(E) (revised 5/11/2022).

3. JS's running towards a bystander at the bus stop was an independent intervening cause of the ensuing need to use deadly force against him. *Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 23 & fn. 3.

4. JS's running towards a bystander at the bus stop was the sole proximate cause of the ensuing need to use deadly force against him. *Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 23 & fn. 3.

5. No evidence established a causal connection between any alleged failure to make an SOP 2-52-5.B.5 plan to approach JS and the subsequent need to use deadly force against him.

6. The claim that a causal connection existed between the alleged failure to make an SOP 2-52-5.B.5 plan to approach JS and the subsequent need to use deadly force against him was a speculative example of the *post hoc ergo propter hoc* logical fallacy made in hindsight and of no evidentiary value.

7. Under the circumstances of this incident, Officer Baca's, Relaford's, and Cordova's plan to approach JS with Officer Baca approaching him in her

unit while Officers Relaford and Cordova closed in on him on foot met the requirements of SOP 2-52-5.B.5.

8. It was not feasible given the circumstances of this incident to plan de-escalation techniques under SOP 2-52-5.B.5.

9. Allegations that Officer Baca and Acting Sargeant Johnson violated SOP 2-52-5.B.5 were administratively dismissed such that it was legal error to assert that claims of failure to make an apprehension plan, plan de-escalation techniques, or create a force array caused or contributed to causing the need for deadly force.

10. It was not feasible given the circumstances of this incident to create a force array under SOP 2-52-5.B.5.

11. No evidence established a causal connection between any alleged failure to create an SOP 2-52-5.B.5 force array and the subsequent need to use deadly force against JS.

12. The investigative conclusion that an alleged failure to create a force array had a causal connection to the subsequent need to use deadly force against JS was unsupported by any evidence and was mere speculation.

13. The investigative conclusion that an alleged failure to create a force array had a causal connection to the subsequent need to use deadly force against JS is an example of the *post hoc ergo propter hoc* logical fallacy.

14. Conclusions resulting from the *post hoc ergo propter hoc* logical fallacy are speculative and therefore insufficient to sustain a legal finding as a matter of law. *Garcia v. Borden, Inc.*, 1993-NMCA-047, ¶ 55.

15. This deadly force event should have been analyzed as a stand-alone occurrence under SOP 2.52.6.B.1c.

16. The failure to analyze this deadly force event as a stand-alone occurrence under SOP 2.52.6.B.1c., was legal error.

17. No evidence established a connection between Officer Baca's approach to JS and his decision to run towards the bus stop. Day 1 TR 150:19-25; TR 151:1-16 (Investigator Dickinson).

18. During both the first and second gunfire volleys, Officer Baca and Acting Sargeant Johnson fired their service weapons at JS to accomplish the lawful objective of preventing him from stabbing RB, in accordance with SOP 2-52-4.C.1.

19. Officer Baca's and Acting Sargeant Johnson's firing their service weapons at JS was objectively reasonable under SOP 2-52-4.C.2.

20. Officer Baca's and Acting Sargeant Johnson's firing their service weapons at JS was necessary under SOP 2-52-4.C.3.

21. Officer Baca's and Acting Sargeant Johnson's firing their service weapons at JS was the minimum amount of force necessary under SOP 2-52-4.C.4.

22. Throughout the use of deadly force against JS, Officer Baca and Acting Sargeant Johnson continually assessed whether they were using the minimum amount of force, whether the use of force was necessary, and whether the use of force was objectively reasonable in compliance with SOP 2-52-4.C.5.

23. The APD Standard Operating Procedure, SOPs, govern the investigations review of whether the actions of the officers; specifically, the

Use of Force Policies 2-52 through 2-57. Further APD's Standard is looking to see if the force was reasonable, minimal and necessary, a higher standard than the federal standard articulated in *Graham v. Connor*. See Day 1 TR 71-74 (investigator Dickinson); see also COA Ex. 74, at 1-2, (APD SOP 2-52-4-A, and APD SOP 2-52-4-C).

24. At all times when Officer Baca and Acting Sargeant Johnson fired their service weapons at JS they had an objectively reasonable belief that he posed an imminent threat of death or serious physical injury to bystander, RB in accordance with SOP 2-52-6.B.1.c.

25. Independent of Officer Baca's and Acting Sargeant Johnson's subjective perceptions, it was objectively reasonable for them to assume that JS was re-armed with a knife at the time they decided to fire the second volley. H.O. Report, §II.B.2.

26. Determinations about the reasonableness of an officer's use of force must be judged from the perspective of a reasonable officer on the scene. *State v. Ellis*, 2008-NMSC-032, ¶ 26.

27. The standard for the reasonableness of an officer's use of force is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *State v. Ellis*, 2008-NMSC-032, ¶ 26.

28. Factors that inform the standard of objective reasonableness include the facts and circumstances of each particular case: the severity of the offender's recent crime, whether the suspect poses an immediate threat to the

safety of others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *State v. Ellis*, 2008-NMSC-032, ¶ 26.

29. The reasonableness of the use of deadly force in any particular situation is an objective test from the perspective of the officer on the scene, with the understanding that officers must often make split-second decisions in difficult situations about what force is necessary. *Archuleta v. LaCuesta*, 1999–NMCA–113, ¶ 8.

30. Those reviewing an officer's actions must consider “the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.” *State v. Ellis, supra*, citing *Graham v. Connor*, 490 U.S. at 397.

31. The risk of gunshot injuries to the two bystanders injured by gunfire in this incident was a necessary risk inherent to the deadly force situation, and not an unnecessary risk within the meaning of SOP 2-52-5.B.4. Day 1 TR 221:9-21 (Christopher Harp).

32. SOP 2-52-5.B.4 did not apply to the IAFD review of this incident because none of the risks inherent to the justifiable use of deadly force in this incident were unnecessary risks. Day 1 TR 221:9-21 (Christopher Harp).

33. SOP 2-52-5.B.4 did not provide a just cause basis for the final decision to impose a 4-hour suspension upon Acting Sargeant Brenda Johnson.

34. SOP 2-52-5.B.4 did not provide a just cause basis for the final decision to impose an 8-hour suspension upon Officer Violeta Baca.

35. SOP 2-52-5.B.5.a did not apply to the IAFD review of this incident because neither Officer Baca nor Acting Sargeant Johnson sought to resolve any potentially violent encounter with JS independently.

36. SOP 2-52-5.B.5.a did not apply to the IAFD review of this incident because the incident involved the threat of death or serious physical injury.

37. SOP 2-52-5.B.5.a did not provide a just cause basis for the final decision to impose a 4-hour suspension upon Acting Sargeant Brenda Johnson.

38. SOP 2-52-5.B.5.a did not provide a just cause basis for the final decision to impose an 8-hour suspension upon Officer Violeta Baca.

39. The circumstances of this incident did not give Acting Sargeant Johnson the time or the opportunity to carry out activities set forth in SOP 3-14-4A.1.g.

40. Acting Sargeant Brenda Johnson did not violate SOP 3-14-4A.1.g.

41. SOP 3-14-4A.1.g. did not provide a just cause basis for the final decision to impose an 8-hour suspension upon Acting Sargeant Brenda Johnson.

42. The administrative standard in determining whether there was a policy violation is preponderance of the evidence. See Day 1 TR 75-79, (Testimony of Inv. Dickinson); see also, Exhibit 74, at 1-2 (APD SOP 2-52-4-A).

43. The City failed to meet its burden and failed to prove by a preponderance of the evidence that it had just cause to terminate either Officer Baca or Acting Sargeant Johnson for alleged violation of APD SOP 2-52-6.B.1.c.

44. Officer Violeta Baca did not violate SOP 2-52-6.B.1.c.

45. Acting Sargeant Brenda Johnson did not violate SOP 2-52-6.B.1.c.

46. SOP 2-52-6.B.1.c. was not a just cause basis for termination or any other discipline against Officer Violeta Baca.

47. SOP 2-52-6.B.1.c. was not a just cause basis for termination or any other discipline against Acting Sargeant Brenda Johnson.

48. Officer Violeta Baca was terminated without just cause.

49. Acting Sargeant Brenda Johnson was terminated without just cause.

50. APD's investigation of Grievant Baca was unfair, biased, and except as to her failure to have her assigned less-lethal weapon system with her at the time of this incident, produced insubstantial evidence warranting any disciplinary action.

51. APD's investigation of Acting Sargeant Johnson was unfair, biased, and except as to her failure to have her assigned less-lethal weapon system with her at the time of this incident, produced insubstantial evidence warranting any disciplinary action.

52. Officer Baca's failure to have her assigned less-lethal weapon system with her at the time of this incident was in violation of SOP 2.2.6.A.4.e.

53. Officer Baca's failure to have her assigned less-lethal weapon system with her at the time of this incident as required by SOP 2.2.6.A.4.e warranted the final decision to impose upon her a 40-hour suspension.

54. Acting Sargeant Johnson's failure to have her assigned less-lethal weapon system with her at the time of this incident was in violation of SOP 2.2.6.A.4.e.

55. Acting Sargeant Johnson's failure to have her assigned less-lethal weapon system with her at the time of this incident as required by SOP 2.2.6.A.4.e warranted the final decision to impose upon her an 8-hour suspension.

56. The availability of less-lethal weapons systems was irrelevant to the deadly force situation which developed that night as the sole result of JS's actions.

57. The Hearing Officer did not rely on any aspect of the testimony of either of the Grievant's expert witnesses

58. No conclusions of law set forth herein were based in whole or in part upon the testimony of either of the Grievants' two expert witnesses.

59. Grievants Violeta Baca and Brenda Johnson should be reinstated to employment retroactive to the respective dates of their terminations.

60. The Personnel Board should remand this matter to the Hearing Officer for determination of back pay and other compensable benefits, consistent with Personnel Board Rules and Regulations.

61. Eric Wilensky's failure to appear is deemed a refusal under the City's Merit System Ordinance and results in forfeiture of his appeal. ROA §3-1-25(H); see City of Albuquerque Personnel Board Rules of Procedure for Appeals of Disciplinary Action, Title 22, Chapter 600, Part I-22.600.1.24 – Failure to Appear.

62. Eric Wilensky's grievance and appeal to the Personnel Board were withdrawn, without objection, upon Order of the Hearing Officer.

63. The City's termination of employment as to former Officer Wilensky is upheld on procedural grounds.

64. To the extent not expressly stated herein, legal conclusions expressed in the Hearing Officer's accompanying Report are incorporated by reference as conclusions of law .

Respectfully Submitted,

RIPLEY B. HARWOOD, P.C.

/s/ Rip Harwood

By:

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Attachment A

BEFORE THE CITY OF ALBUQUERQUE
PERSONNEL BOARD

IN THE MATTERS OF ERIC WILENSKY,
VIOLETA BACA and BRENDA JOHNSON,
Former Employees of the City of Albuquerque,

PB 23-22, 23-23, 23-24

Grievants.

**PERSONNEL BOARD'S FINAL ORDER UPHOLDING
IN PART AND REVERSING IN PART DISCIPLINARY DECISIONS**

THIS MATTER came before the City of Albuquerque Personnel Board for review of the Hearing Officer's report, proposed findings of fact and conclusions of law, and recommended decision. Having read, reviewed, considered and deliberated over same, and having duly considered all evidence of record pertaining to it, the Board RULES AND ORDERS AS FOLLOWS:

The Board adopts the Hearing Officer's report, proposed findings of fact and conclusions of law, and the following recommended decisions:

1. Eric Wilensky's termination from employment with the City of Albuquerque Police Department is upheld and affirmed on procedural grounds, *i.e.*, his failure and refusal to appear at the hearing.
2. Officer Violeta Baca's termination from employment with the City of Albuquerque Police Department was without just cause and is reversed.
3. Acting Sargeant Brenda Johnson's termination from employment with the City of Albuquerque Police Department was without just cause and is reversed.
4. The final decision to impose upon Officer Baca a 40-hour suspension for failure to have her assigned less-lethal weapon system with her at the time of this incident is upheld.

5. The final decision to impose upon Acting Sargeant Johnson an 8-hour suspension for failure to have her assigned less-lethal weapon system with her at the time of this incident is upheld.

This matter is remanded to the Hearing Officer to conduct further proceedings as deemed necessary to calculate such compensation and other damages as may be recoverable by Officer Baca and Acting Sargeant Johnson under applicable rules and regulations.

IT IS SO ORDERED.

Attachment B

APPENDIX A COST – FLAT HOURLY RATE

A Flat hourly rate for providing services as City of Albuquerque’s Personnel Hearing Officer shall be based on the following categories:

Personnel Hearings (Primary), will be billed in tenth of an hour increments based on the following fee schedule:

Years	Hourly Rate
5-9.99	\$130
10+	\$160

I certify these fees will be honored if I (individual hearing officer) is selected as the finalist.

 2/19/25
Signature Date

RIP HARWOOD, CEO
(Name Printed and Title)

RIPLEY B. HARWOOD, P.C.
Firm Name