ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT

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§ 2-10-1 SHORT TITLE.

Sections 2-10-1 through 2-10-16 may be cited as the "Accountability in Government Ordinance".
(Ord. 1-2005)

§ 2-10-2 FINDINGS; PURPOSE; GOALS.

(A) The Council finds that good governance, transparency and accountability are critical in the public sector for the effective and credible functioning of a healthy democracy, and in fulfilling the government's responsibility to citizens and taxpayers. Transparent and reliable reporting and effective auditing in government serve to promote accountability, enhance the effectiveness of government services to its citizens, and increase the public's confidence in their government.

(B) The Mayor and City Council share a duty to insure that the actions of public officials, employees and contractors of the city are carried out in the most responsible manner possible and that city policies, budgets, goals and objectives are fully implemented. To accomplish this end, the city requires the services of an independent organization to perform internal audits, conduct management studies and investigate claims of waste and mismanagement.

(C) The Committee shall oversee the Director and the Inspector General, whose goals are to:

(1) Conduct audits and investigations in an efficient, impartial, equitable and objective manner;

(2) Prevent and detect fraud, waste and abuse in city activities including all city contracts and partnerships;

(3) Propose ways to increase the city's legal, fiscal and ethical accountability through the use of audit and management studies to insure that tax payers' dollars are spent in a manner that improves the economy of operations; and

(4) Deter criminal activity through independence in fact and appearance, audit, investigation and interdiction.

(Ord. 1-2005; Am. Ord. 45-2006; Am. Ord. 30-2010)

§ 2-10-3 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUDITEES. Auditees are the city related departments, programs, activities, agencies, vendors, contractors or other city related entities affected by an audit or investigation.

COMMITTEE. The Accountability in Government Oversight Committee.

CONTRACTORS. All city contractors.

DIRECTOR. The Director of the Office of Internal Audit.

EMPLOYEE. All city employees.

EXPANDED SCOPE AUDIT. An audit whose original scope is modified by the Director or the Committee based on circumstances and findings uncovered during the audit.

INSPECTOR GENERAL. The Inspector General created pursuant to the Inspector General Ordinance (§§ 2-17-1 et seq.).

OFFICIAL. The Mayor and Councilors.

PUBLISHED. An audit report is published when it is approved by the Committee and distributed in final form to the auditees, to the Mayor and Chief Administrative Officer, and to the City Council. A published audit report is available on request to the public.

SPECIAL AUDITS. Exigent audits not included in the annual audit plan, because the need for the audits was not foreseen when the audit plan was adopted.

(Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-4 CREATION OF THE OFFICE OF INTERNAL AUDIT; RESOURCES; STAFF.

(A) The Office of Internal Audit is created as an independent office of city government. The Office of Internal Audit is not part of the city's executive branch or the City Council. The Director shall report to the Committee.

(B) The Director shall hire the Internal Auditor. The Internal Auditor shall be able to manage a professional audit staff, analyze financial and property records and evaluate operations for economy, efficiency and program results.

(C) The Office of Internal Audit shall be funded from the General Fund.

(D) The Director shall establish the organizational structure appropriate for carrying out the responsibilities and functions of the Office of Internal Audit.

(E) The Director shall select and hire his employees for the efficient and effective administration of the Office of Internal Audit.

(F) The Office of Internal Audit shall provide staff support to the Committee and administrative staff support to the Office of the Inspector General.

(G) Neither the Director nor any employee of the Office of Internal Audit shall engage in any partisan political activities or the political affairs of the city during work hours. (Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-5 CREATION OF COMMITTEE; DUTIES; POWERS; MEMBERSHIP.

(A) The "Accountability in Government Oversight Committee" is created. The Committee shall consist of five members from the community at large. The Mayor and one Councilor appointed annually by the Council President shall be nonvoting ex officio members. The Mayor and the appointed Councilor may send designees to the Committee meetings. At least one Committee member shall be a CPA, at least one Committee member shall have a law enforcement or law background and at least one Committee member shall be a professional management consultant.

(B) As vacancies on the Committee occur, the Council and Mayor shall alternatively appoint new members with the Council making the first appointment. All appointments shall be subject to Council approval. The existing Committee members may make recommendations to the Mayor and Council for candidates to fill vacancies on the Committee. If either the Mayor or Council fails to name a replacement Committee member within 45 days of the vacancy, then the other body shall make the appointment. The Committee members shall be appointed for staggered terms of three years unless an appointment is to fill a vacancy. An appointment to fill a vacancy shall be for the unexpired term. Terms shall begin on the first day of September. The Committee members shall elect the Committee Chair annually.

(C) The Committee shall meet monthly or upon the call of the Chair or a majority of its members.

(D) Committee members shall not receive compensation for their service. Voting members of the Committee shall not serve on any other city board, commission or task force.

(E) The Chief Administrative Officer and the Director of Council Services or their designees may attend all Committee meetings.

(F) If an Official is the subject of an investigation, then the ex officio members, their designees, the Chief Administrative Officer and the Director of Council Services shall be recused from all meetings where that particular investigation is being discussed and they shall not have access to the investigative file during the pending investigation.

(G) The Committee is a management committee and not a public board, commission or committee as specified by §§ 2-6-1-1 et seq. and not subject to the Open Meetings Act. The Committee is not formed to formulate public policy nor is authority to formulate public policy delegated to the Committee.

(H) The Committee may remove the Director or the Inspector General by a majority vote. Within five days of the Director or Inspector General's removal, the Committee shall report the reasons for removal to the Mayor and the Council.

(I) The Committee shall annually recommend a budget to the Mayor and Council that may include a salary adjustment for the Director or the Inspector General.

(J) The Committee shall provide the Director and the Inspector General with

guidance, priorities and potential areas for investigations and audits. The Committee may also lend advice to the Director and the Inspector General regarding technical issues that may arise.

(K) The Committee shall coordinate the work of the Office of Internal Audit and the Office of the Inspector General with the Mayor's and Council's needs.

(L) The Committee shall not prohibit the Director or the Inspector General from initiating, carrying out or completing any audit, investigation or review. If a majority of the Committee members finds that an audit, investigation or review is questionable, then the Committee shall issue a cautionary statement to the Director or the Inspector General, as appropriate.

(M) The Committee shall review and approve all audit and investigatory reports at each meeting.

(N) The Committee shall prepare a job description, specify qualifications for applicants, work with the Director of the Human Resources Department to advertise for the position and develop the applicant search procedure and make recommendations to the Council on the selection of the Director and the Inspector General.

(O) Any discipline of the Director or the Inspector General, as provided by § 3-1-6 ROA 1994, shall be by the Committee. The Director and the Inspector General shall report to the Committee for approval of vacation, sick, emergency and city business leave.
(Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-6 SELECTION OF DIRECTOR.

(A) The Committee, through its staff, shall receive applications from candidates, interview candidates and shall submit to Council the names of the three candidates that it finds to be the best qualified to be Director indicating its ranking and the Council shall select the Director from the three by adoption of a resolution. The Committee's recommendation to Council shall be based on the candidates' integrity, capability for strong management and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration or other closely related fields.

(B) No former or current official or employee, except for a person who held the position of Director or Internal Auditor, may be appointed Director within four years of that person's period of service.

(C) Prior to the final selection of the Director, the candidate shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the Committee to obtain the candidate's Federal Bureau of Investigation record. Records and related information shall be privileged and shall not be disclosed to anyone other than Committee members. The city shall pay for the cost of obtaining the Federal Bureau of Investigation records.
(Ord. 1-2005; Am. Ord. 39-2007; Am. Ord. 30-2010)

§ 2-10-7 DIRECTOR'S DUTIES; RESPONSIBILITIES; AUTHORITY; ADMINISTRATIVE SUBPOENA POWER.

(A) If the Director detects apparent or potential violations of law or apparent instances of misfeasance or nonfeasance by an official or auditee, he shall report the irregularities in writing to the Committee. If the irregularity is criminal in nature, the Director shall immediately

refer the irregularity to the appropriate prosecuting authority and notify the Inspector General. If the irregularity warrants an audit, then the Director shall refer the matter to the Internal Auditor. The Director shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(B) Upon request of the Mayor or City Council, the Director shall assist or provide resources to assist city departments in the review of state and federal legislation, city ordinances, resolutions, rules, regulations and policies pertaining to that particular city department or office.

(C) The Director shall promulgate regulations to establish procedures for the Office of Internal Audit.

(D) The Director shall have the power to subpoena witnesses, administer oaths and require the production of records subject to the New Mexico Rules of Civil Procedure. In the case of a refusal to obey a subpoena issued to any person, the Director may make application to any District Court in the state that shall have the jurisdiction to order the witness to appear before the Director and to produce evidence if so ordered, or to give testimony touching on the matter in question.

(E) The Director shall maintain a complete file of each audit report and each report of other examinations, surveys and reviews made under legislative or special Committee authority for at least six years. The file should include audit work papers and other supportive material directly pertaining to the report. Records may be retained in electronic format at the Director's election.

(F) In cases where the Director deems it appropriate because of an audit, he may refer opportunities for increased efficiency to the Office of Management and Budget to work with respective departments on management and process improvement.

(Ord. 1-2005; Am. Ord. 45-2006; Am. Ord. 30-2010)

§ 2-10-8 PROFESSIONAL STANDARDS.

(A) The Internal Auditor shall adhere to generally accepted government auditing standards in conducting its work and will be considered independent as defined by those standards.

(B) The Office of Internal Audit's audits, inspections and reviews shall be subject to quality assurance reviews by an appropriate professional non-partisan objective group every three to five years. A copy of the written report resulting from this review shall be furnished to the Committee.

(Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-9 PUBLIC RECORDS; CONFIDENTIALITY.

(A) The Director shall maintain the confidentiality of any public records that are made confidential by law and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes.

(B) During the course of audit activities, all records shall be considered deliberative in process and not available for outside review.

(C) Prior to publishing a report, the Director may share selected information with other city departments if the information is needed for decision-making purposes; otherwise,

reports remain confidential until published, at which time they become public record.

(D) The names and identities of persons making complaints and providing information shall not be disclosed without the written consent of the person unless otherwise required by law or judicial processes.

(E) Published reports shall be public records except that the Director shall delay the publication of reports when criminal conduct is found and the Inspector General or appropriate law enforcement authority is pursuing an investigation and release of the report might jeopardize further investigation. An audit whose release has been delayed shall be published promptly at the end of the condition giving rise to the delay.

(F) The Director may release a preliminary draft of an audit of anyone other than a city department or agency to the auditee for review and comment if the auditee agrees to restrict its use and to maintain the confidentiality of the information.

(Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-10 AUDIT DIVISION; SCOPE OF AUDITS.

(A) The Director shall establish an Internal Audit Division. The head of the Internal Audit Division shall be the Internal Auditor.

(B) The Internal Audit Division shall conduct audits, forensic audits and Expanded Scope Audits of all auditees to independently determine whether:

(1) The city, state or federal law authorizes implemented activities and programs;

(2) The objectives intended by city, state or federal law are efficiently and effectively accomplished in the implementation of activities and programs;

(3) The expenditure of funds complies with applicable laws;

(4) The revenues are properly collected, deposited and accounted for;

(5) Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;

(6) Financial and other reports fairly and fully disclose all information as required by law necessary to evaluate and ascertain the nature and scope of programs and activities;

(7) Management established operating and administrative procedures and practices, accounting internal control systems and internal management controls are adequate and functioning as intended; and

(8) City policies, budgets, goals and objectives are fully implemented.

(C) At an official's request, the Director shall initiate special audits subject to the provisions of § 2-10-12.

(Ord. 1-2005; Am. Ord. 39-2007)

§ 2-10-11 ANNUAL AUDIT PLAN.

(A) Prior to the beginning of each fiscal year, the Director shall submit an annual audit plan to the Committee for review and comment. As part of these deliberations, the officials shall be invited to recommend areas for inclusion in the plan. The plan shall include the auditees scheduled for audit during the year, a statement of the scope of the audit and the

estimated time required to complete the audit.

(B) The annual audit plan shall be transmitted to the Council for final approval as a resolution.

(C) This plan may be amended by resolution during the year after review with the Committee.

(D) In the selection of audit areas, the determination of audit scope and the timing of audit work, the Director should consult with federal and state auditors and independent auditors so that the desirable audit coverage is provided and audit effort may be properly coordinated.

(E) The Director shall make reports at least quarterly to the Committee on the status of the work plan.

(Ord. 1-2005; Am. Ord. 45-2006; Am. Ord. 30-2010)

§ 2-10-12 SPECIAL AUDITS; AUDIT REPORTS.

(A) The Director may initiate a special audit without outside approval if expediency is necessary for an adequate audit response.

(B) If the Director does not expect a special audit to consume more than 2% of his budgeted audit hours, no authorization is required.

(C) If the Director expects a special audit to consume more than 2% of his budgeted audit hours, but not consume as much as 10% of his budgeted audit hours, the Committee shall approve the special audit as quickly as possible by telephonic or electronic vote; if the Committee declines approval, the Director shall terminate the special audit immediately.

(D) In all other cases, a special audit shall promptly be submitted for approval by the Council as an amendment to the annual audit plan. The Committee shall make a recommendation on the special audit to the Council. If the Council declines approval, that special audit shall immediately terminate.

(E) In all cases, the Director shall, within 48 hours of implementation, notify the Committee that a special audit is being undertaken.

(F) A preliminary draft of the audit report shall be forwarded to the auditees and the Chief Administrative Officer for review and comment before it is provided to the Committee for pre-publication review. The auditees, including departments whose assistance is needed in order to accomplish a recommendation, shall respond to the Director, in writing, within 14 days of receipt of the audit report.

(G) The auditees' written response shall specify agreement with each of the audit findings and recommendations or reasons for disagreement with findings or recommendations. The auditees' written responses shall include auditees' plans for implementing solutions to identified problems including timetables to complete such activities.

(H) Auditees' comments to the preliminary draft may be utilized to amend the report if appropriate. If the preliminary audit report is amended, the auditees will be given a copy of the amended draft, and the auditees will be given seven to 14 days, as determined by the Director and the auditees, to respond to the amended draft of the audit report.

(I) The Director shall include the auditees' responses in the audit report.

(Ord. 1-2005)

§ 2-10-13 REPORTS TO THE COMMITTEE.

(A) Each investigation, audit and special audit shall result in a written final report.

(B) The Director shall submit five copies of each report to the Committee and shall retain a copy as a permanent record.

(C) If appropriate, the report shall contain the professional opinion of the Director or the contract auditor concerning the financial statements issued by the auditees, or if the audit is an expanded scope audit or a management audit, the report shall contain the professional conclusions of the auditor regarding the management activities audited.

(D) The Internal Auditor's audit reports shall include:

(1) A precise statement of the scope encompassed by the audit;

(2) A statement that the audit was performed in accordance with generally accepted government auditing standards;

(3) A statement that an examination for compliance with applicable laws, policies and regulations was conducted, and a presentation of the findings associated with that examination;

(4) A statement of significant audit findings, including a statement of the underlying causes, evaluative criteria used and the current and prospective significance of the findings;

(5) A statement that internal control systems were examined and a report of any material weaknesses found in the internal control systems;

(6) Statements of response submitted by the auditees relevant to the audit findings;

(7) A concise statement by the auditees of the corrective actions previously taken or contemplated as a result of the audit findings and a timetable for their accomplishment; and

(8) Recommendations for additional necessary or desirable action.

(Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-14 REPORTING.

(A) The Director shall annually report to the Council and the Mayor regarding his activities.

(B) Within 60 days of the end of each fiscal year, the Director shall issue a published report to the Committee that separately lists audit reports, review reports and other assistance efforts completed during the fiscal year.

(C) The Director shall notify members of the media and the public of the issuance of the published report. The Office of Internal Audit shall provide copies of the published report upon request.

(Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-15 CONTRACT AUDITORS, CONSULTANTS, AND EXPERTS.

Upon approval of the Committee, the Director may obtain the services of certified public accountants, qualified management consultants, certified fraud examiners, forensic auditors or other professional experts necessary to perform the functions of the Office of Internal Audit. Contractors performing an audit shall not have any financial interest in the affairs of the auditees,

officials or employees. The Director shall coordinate and monitor auditing performed by persons under contract to the Director.
(Ord. 1-2005; Am. Ord. 30-2010)

§ 2-10-16 PENALTY; COOPERATION; RETALIATION PROHIBITED.

(A) All city officials, employees and contractors shall provide the Director full and unrestricted access to all city offices, employees, records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, electronic data, property, equipment and facilities and any other materials within their custody. At the Director's request, an official, employee or contractor shall prepare reports and provide interviews. If an official, employee, vendor or contractor fails to produce the requested information, the Director shall notify the Committee and make written request to the Chief Administrative Officer for his assistance in causing a search to be made and germane exhibits to be taken from any book, paper or record excepting personal property. The Chief Administrative Officer shall require the officials, employees, vendors or contractors to produce the requested information.

(B) Every city contract, bid, proposal, application or solicitation for a city contract and every application for certification of eligibility for a city contract or program shall contain a statement that the individual understands and will abide by all provisions of the Accountability in Government Ordinance.

(C) No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with or assisting the Director in the performance of his office.

(D) Each and every violation of this article is a criminal violation subject to the provisions of § 1-1-99 ROA 1994.

(E) Any official or employee who violates the Accountability in Government Ordinance may be subject to discipline as may be specified in the Merit System Ordinance or any applicable collective bargaining agreement.
(Ord. 1-2005; Am. Ord. 30-2010)