

PROFESSIONAL SERVICES AGREEMENT
C239013
Force Main Assessment

This Professional Services Agreement (hereinafter “Agreement”) is entered into as of this 9TH day of MAY, 2023, by and between **CPM PIPELINES** (hereinafter referred to as “**CONTRACTOR**”), and The City of Oklahoma City (hereinafter referred to as “**CITY**”), the Oklahoma City Water Utilities Trust (hereinafter referred to as “**OCWUT**”), **CITY and its TRUSTS** are each a public body organized under the laws of the State of Oklahoma.

WITNESSETH:

WHEREAS, on October 26, 2022, the **TRUSTS** prepared a Request for Proposal (“**RFP**”) seeking a Professional Services Agreement for force main assessment for the **TRUSTS**; and

WHEREAS, on December 7, 2022, the **TRUSTS** received responses to its **RFP**; and

WHEREAS, a selection committee reviewed and evaluated the responses; and

WHEREAS, the **CONTRACTOR** represented itself, both in its response (“**Proposal**”) and its interview (“**Interview**”) as an expert in the field of pipeline inspection services for the municipal water and waste water market with skilled professionals willing, able, and capable of timely providing the services requested and required by the **TRUSTS** in the **RFP**; and

WHEREAS, based upon the representations, guarantees, and warranties expressed by the **CONTRACTOR** both in the **Proposal** and the **Interview**, the selection committee recommended, and the **TRUSTS** selected and entered this Agreement with the **CONTRACTOR**; and

WHEREAS, the **TRUSTS** strives to obtain proposals from qualified firms to conduct internal inspection of the force mains; and

WHEREAS, **TRUSTS** retains **CONTRACTOR** to provide professional services as an independent contractor; and

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WHEREAS, CONTRACTOR agrees to provide the **TRUSTS** all services, in accordance with the standards exercised by experts in the field, necessary to provide the **TRUSTS** services, products, solutions and deliverables that meet all the purposes and functionality requested or described in the RFP and in this Agreement.

NOW, THEREFORE, for and in consideration of the above premises and the mutual covenants set forth herein, the **TRUSTS** and **CONTRACTOR** hereby mutually agree as follows:

1. Professional Services Agreement

Subject to the terms and conditions of this Agreement, **TRUSTS** retains the **CONTRACTOR**, an independent contractor, to provide the **TRUSTS** all services, in accordance with the standards exercised by experts in the field, necessary to provide the **TRUSTS** services, products, solutions, and deliverables that meet all the purposes and functionality requested or described in the RFP and in this Agreement.

- (a) This Agreement governs the Scope of Services including, but not limited to, all services, products, solutions, and deliverables to be provided by the **CONTRACTOR** to the **TRUSTS**. The Attachments are incorporated into this Agreement by reference and, should there be a conflict in language, terms, conditions, or provisions, shall have the priority and precedential value as set forth in this paragraph.
- (b) The text of this Agreement, together with the Attachments, constitutes the entire Agreement and the only understanding and agreement between the **TRUSTS** and the **CONTRACTOR** with respect to the services, products, solutions, and deliverables to be provided by the **CONTRACTOR** hereunder. This Agreement may only be amended, modified, or changed in writing when signed by all parties, or their respective specifically authorized representatives, as set forth in this Agreement.
- (c) If there is a conflict in language, terms, conditions, or provisions, in this Agreement between the text of this document, (Professional Services Agreement pages 1 through 15,) and any language, term, condition, or provision in any

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Attachment, then the text of this document, (Service Agreement pages 1 through 15) shall govern and control over any conflicting language, term, condition, or provision in any Attachment. As among the Attachments any conflict in the language, terms, conditions, or provisions shall be governed in the following order of priority and precedence:

Attachment “A” (“Project Description and Scope of Services”),

Attachment “B” (“Contractor’s Project Team”),

Attachment “C” (“Schedule of Fees”),

Attachment “D” (“Project Schedule”),

Attachment “E” (“Insurance Certificate”),

Attachment “F” (“Non Discrimination Statement and Non-Collusion Affidavit”).

2. Retention of CONTRACTOR and Scope of Services

(a) **CONTRACTOR** is solely responsible for the actions, non-action, omissions, and performance of **CONTRACTOR’S** employees, agents, contractors, and subcontractors (herein collectively included in the term “Service Provider’s Project Team”) and to ensure the timely provision of the Project, services, products, solutions, and deliverables listed in Attachment A “Scope of Services”.

(1) the timely provision of the Project and timely performance of the Scope of Services as each are defined in **Attachment “A”**,

(2) the timely provision of all services, products, solutions, and deliverables, including but not limited to, the Deliverables listed on **Attachment “D”**,

CONTRACTOR will be solely responsible to ensure the **CONTRACTOR’S** Project Team fully understands the Project, the Scope of Services, the Deliverables, the schedule for performance, and the **TRUSTS’** goals and purposes. **CONTRACTOR** will be solely responsible to ensure the **CONTRACTOR’S Project Team** is adequately

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trained, instructed, and managed so that **CONTRACTOR** timely provides the Project and satisfies **CONTRACTOR'S** obligations under this Agreement. **CONTRACTOR** may not change the **CONTRACTOR'S Project Team** as set forth in OCWUT 01-23 Bid Document p. 13-14 ("**CONTRACTOR'S Project Team and TRUSTS' Resources**") without the prior written consent of the **GENERAL MANAGER** of **OCWUT** or designee.

(b) **CONTRACTOR** shall comply with all applicable federal, state, and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or services provided under this Agreement. **CONTRACTOR** shall obtain all patents, licenses and any other permission required to provide all services, products, solutions, and deliverables and for use of all services, products, solutions, and deliverables by the **TRUSTS**.

3. Compensation

(a) The **TRUSTS** shall pay **CONTRACTOR** the compensation after completion of services or products as specified in **Attachment "C"** ("**Schedule of Fees**),

(b) The **TRUSTS** and **CONTRACTOR** acknowledge that the compensation to be paid **CONTRACTOR** pursuant to this Agreement has been established at an amount reasonable for the availability and services of **CONTRACTOR and CONTRACTOR'S Project Team**.

4. Independent Contractor Status

(a) The parties hereby acknowledge and covenant that:

1. **CONTRACTOR** is an independent contractor and will act exclusively as an independent contractor is not an agent or employee of the **TRUSTS** in performing the duties in this Agreement.

2. The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

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(b) All payments to **CONTRACTOR** pursuant to this Agreement shall be due and payable in the State of Oklahoma, even if the services of **CONTRACTOR** are performed outside the State of Oklahoma.

(c) The **TRUSTS** will not withhold any social security tax, workmen's compensation, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to **CONTRACTOR** as **CONTRACTOR** is an independent contractor and the members of its **CONTRACTOR'S Project Team** are not employees of the **TRUSTS**. Any such taxes, if due, are the responsibilities of **CONTRACTOR** and will not be charged to the **TRUSTS**.

(d) **CONTRACTOR** acknowledges that as an independent contractor it and its **Project Team** are not eligible to participate in any health, welfare or retirement benefit programs provided by the **TRUSTS** for its employees.

5. Termination and Stop Work.

(a) This Agreement shall commence upon execution by the last party hereto and shall continue in effect as stated herein, unless terminated by either party as provided for herein, until the Project is completed and accepted as provided herein. The **GENERAL MANAGER** of **OCWUT** or designee are hereby authorized to issue notices of termination or suspension on behalf of the **TRUSTS**. This Agreement can be terminated, with or without cause, upon written notice, at the option of the **TRUSTS**.

(1) Upon receipt of a notice of termination for the *convenience* from the **TRUSTS**, **CONTRACTOR** shall (1) immediately discontinue all services and activities (unless the notice directs otherwise), and

(2) upon payment for products or services fully performed and accepted, **CONTRACTOR** shall deliver to the **TRUSTS** all work, products, deliverables, documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated or created in performing this Agreement, whether same are complete or incomplete, unless the notice directs otherwise. Upon termination for the *convenience* by the **TRUSTS**, the **TRUSTS** shall pay **CONTRACTOR** for completed services, up to the time of the notice of

termination for *convenience*, in accordance with the terms, limits and conditions of the Agreement and as further limited by the “not to exceed” amounts set out in this Agreement.

(3) Upon notice of termination for *cause* from the **TRUSTS**, **CONTRACTOR** shall not be entitled to any prior or future payments, including, but not limited to, any services, performances, work, products, deliverables, solutions, costs, or expenses, and **CONTRACTOR** shall release and waive any interest in any retainage. The **TRUSTS** may hold any outstanding payments for prior completed services or expenses and any retainage as security for payment of any costs, expenses, or damages incurred by the **TRUSTS** by reason of **CONTRACTOR’S** breach or other cause. Provided, however, upon notice of termination for cause, **CONTRACTOR** shall deliver to the **TRUSTS** services, products, solutions, and deliverables including, but limited to, all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated or created in performing this Agreement, whether complete or incomplete, unless the notice directs otherwise.

(4) The rights and remedies of the **TRUSTS** provided in this paragraph are in addition to any other rights and remedies provided by law or under the Agreement. Termination herein shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **CONTRACTOR** under this Agreement.

(a) Upon notice to **CONTRACTOR**, the **TRUSTS** may issue a stop work order suspending any services, performances, work, products, deliverables, or solutions under this Agreement. Any stop work order shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **CONTRACTOR** under this Agreement. In the event the **TRUSTS** issues a stop work order to **CONTRACTOR** the **TRUSTS** will provide a copy of such stop work order to **CONTRACTOR**. Upon receipt of a stop work order issued by the **TRUSTS**, **CONTRACTOR**

shall suspend all work, services and activities except such work, services, and activities expressly directed by the **TRUSTS** in the stop work order. Upon notice to **CONTRACTOR**, this Agreement, and any or all work, services, and activities thereunder, may be suspended up to thirty (30) days by the **TRUSTS**, without cause and without cost to **TRUSTS**; provided however, **CONTRACTOR** shall be entitled to an extension of all subsequent deadlines for a period equal to the suspension periods for those suspended work, services, and activities only. The **GENERAL MANAGER** of **OCWUT** or designee are hereby authorized to issue stop work orders on behalf of the **TRUSTS**.

6. Obligation upon Termination for Convenience

In the event this Agreement is terminated for convenience hereunder, the **TRUSTS** shall pay **CONTRACTOR** for such properly documented invoices, if any, in accordance with the provisions of this Agreement above, through the date of termination for *convenience* and the period set forth in the notice, and thereafter the **TRUSTS** shall have no further liability under this Agreement to **CONTRACTOR** and **CONTRACTOR** shall have no further obligations to the **TRUSTS**.

7. Warranties

(a) **CONTRACTOR** warrants that all services, products, solutions, and deliverables performed or provided under this Agreement shall be performed consistent with generally prevailing professional standards and expertise. **CONTRACTOR** shall maintain during the course of this Agreement said standard of care, expertise, skill, diligence and professional competency for any and all such services, products, solutions and deliverables. **CONTRACTOR** agrees to require all members of the **CONTRACTOR'S Project Team** to provide any and all services, products, solutions and deliverables at said same standard of care, expertise, skill, diligence and professional competence required of **CONTRACTOR**.

(b) During the term of this Agreement, **TRUSTS'** initial remedy for any breach of the above warranty shall be to permit **CONTRACTOR** one additional opportunity to perform the services, or provide the products, solutions, and deliverables without

additional cost to **TRUSTS**. If **CONTRACTOR** cannot perform the services, or provide the products, solutions and deliverables according to the standards and requirements set forth in this Agreement within thirty (30) calendar days of the original performance date, the **TRUSTS** shall be entitled to recover, should the **TRUSTS** so determine to be in their best interest, any fees paid to **CONTRACTOR** for previous payments, including, but not limited to, services, products, solutions, and deliverables and **CONTRACTOR** shall make reimbursement or repayment within thirty (30) days of a demand by the **TRUSTS**. Should **CONTRACTOR** fail to reimburse the **TRUSTS** within thirty (30) days of demand, the **TRUSTS** shall also be entitled to interest at 1.5% percent per month on all outstanding reimbursement and repayment obligations.

(c) The **CONTRACTOR** also acknowledges and agrees to provide all express and implied, warrants required or provided for by Oklahoma statutory and case law. This warrant is in addition to other warranties provided in or applicable to this Agreement and may not be waived by any other provision, expressed or implied, in this Agreement or in any Attachment hereto.

8. Indemnification

(a) **CONTRACTOR** agrees to release, defend, and indemnify the **TRUSTS**, and each of them, and hold the **TRUSTS**, and each of them, harmless against any losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements in connection resulted from the intentional acts or omissions, negligence, and misconduct of **CONTRACTOR** and the **CONTRACTOR'S Project Team**. Any such indemnification or reimbursement shall be made by **CONTRACTOR** within thirty (30) days of an appropriate finding of facts, whether by mutual agreement or by a court of law.

(b) The provisions of this paragraph shall survive the expiration of this Agreement. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provisions of this Agreement.

9. Confidentiality

CONTRACTOR acknowledges that in the course of training and providing other support services to **TRUSTS**, **TRUSTS** may provide **CONTRACTOR** with

access to valuable information of a confidential and proprietary nature including but not limited to information relating to **TRUSTS'** employees, customers, marketing strategies, business processes and strategies, security systems, data, and technology. **CONTRACTOR** agrees that during the time period this Agreement is in effect, and thereafter, neither **CONTRACTOR** nor **CONTRACTOR'S Project Team**, without the prior written consent of **TRUSTS**, shall disclose to any person, other than another member of **TRUSTS' Administrative Team** or the **CONTRACTOR'S Contract Administrator**, any information obtained by **CONTRACTOR**. **CONTRACTOR** will require and maintain adequate confidentiality agreements with its employees, agents, contractors, and subcontractors.

10. Miscellaneous

(a) **Validity.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

(b) **No Waiver.** The failure or neglect of any party hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this Agreement, or waiver by any party of strict performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

(c) **No Assignment without Consent.** The parties hereby agree that as this is an agreement for the provision of specialized services, therefore **CONTRACTOR** may not assign this Agreement in whole or in part without the prior written consent of the **TRUSTS**. In addition, **CONTRACTOR** agrees that the **CONTRACTOR'S Project Manager** may not be removed or replaced without the express written consent of the **GENERAL MANAGER** of **OCWUT** or designee.

(d) **Venue and Applicable Law.** The **TRUSTS** and **CONTRACTOR** hereby agree that any dispute, legal proceeding or action which may arise between or among them arising out of or in connection with this Agreement shall be adjudicated before a court located in Oklahoma City, Oklahoma, and each hereby submit to the exclusive

personal jurisdiction of the courts of the State of Oklahoma located in Oklahoma City, Oklahoma and of the Federal District Court for the Western District of Oklahoma, located in Oklahoma City, with respect to any action or legal proceeding commenced by any party. The **CONTRACTOR** irrevocably waives any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this Agreement, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth in the notice provision of this paragraph. This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma.

(e) **Descriptive Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

(f) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

(g) **Amendments.** This Agreement may not be modified, amended, altered, or supplemented except upon the execution and delivery of a written amendment executed by each of the parties hereto.

(h) **Entire Contract.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

(i) **Time is of Essence.** Both the **TRUSTS** and **CONTRACTOR** expressly agree that time is of the essence with respect to this Agreement, and the time for performance of each task shall be made a part of the Agreement and shall be strictly observed and enforced. Any failure on the part of the **TRUSTS** to timely object to the time of performance shall not waive any right of the **TRUSTS** to object at a later time.

(j) **Upgrades and Substitutions.** During the performance of this Agreement, if

any software named in this Agreement is upgraded in the software provider's product line by software performing the same functions, but using improved technology, then the newer product will be substituted upon the direction and approval of the **GENERAL MANAGER** of **OCWUT** and implemented by **SERVICES PROVIDER** for no increase in costs or fees.

(k) **No Extra Work.** No claims for extra work, product, services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon the **TRUSTS** unless such services, work, product, solution, or deliverable is first requested and approved in writing by the **TRUSTS** through a contract amendment.

(l) **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if e-mailed, hand delivered, or sent by facsimile transmission (upon confirmation of receipt), or if sent by certified mail (upon the sooner of the expiration of three (3) days after deposit in United States post office facilities properly addressed with first class postage prepaid or acknowledgment of receipt). All notices and payments to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

To **SERVICE PROVIDER:**

Company Name: CPM Pipelines

Attention: Chris MacDonald

Address 1: 3625 E Atlanta Ave, Unit 2

City, State Zip Code: Phoenix, AZ 85940__

Telephone: 480-206-2309

E-mail: chris@cpmpipelines.com

AND

To **Oklahoma City Water Utilities Trust**
Attention: Chris Browning, General Manager
420 W. Main Street, Ste. 500
Oklahoma City, Oklahoma 73102

AND

To **City Hall**
Attention: City Clerk
200 N. Walker Ave., Second Floor
Oklahoma City, OK 73102
Telephone (405) 297-2391
Email: cityclerk@okc.gov

- (m) **Effective.** This Agreement shall become effective upon execution by the last party.
- (n) **Term and Renewal Option.** The initial term of the resulting Professional Services Agreement (PSA) shall be effective for three (3) years with the option to extend the contract for two (2) one (1) year extensions upon mutual agreement by both parties.
- (o) Should the **TRUSTS** desire to renew the Agreement, a written preliminary notice will be furnished to the **CONTRACTOR** prior to the expiration date of the Agreement. (Such preliminary notice will not be deemed to commit the **TRUSTS** to renew.)

11. **TRUSTS' Responsibilities**

- (a) The **TRUSTS** shall only provide such space, equipment, and personnel to assist **CONTRACTOR** as expressly set forth in **Attachment "A" (Scope of Services)**.
- (b) All financial obligations of the **TRUSTS** under this Agreement shall be solely the obligations of The City of Oklahoma City regardless of how stated herein.

12. **Insurance**

- (a) **CONTRACTOR** shall obtain and provide **TRUSTS** with a copy of the certificate of insurance prior to execution of the contract by **CONTRACTING ENTITY** and shall maintain such insurance throughout the term of this Agreement as required and, in the

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form, and in the amount set forth in **Attachment “E”** which is incorporated herein by reference.

(b) **CONTRACTOR** shall be responsible for providing the **TRUSTS** actual notice of any change, reduction, suspension, lapse, or cancellation of any insurance provided under this Agreement at least thirty (30) days prior to such change, reduction, suspension, lapse or cancellation.

(1) Should any insurance required by this Agreement be changed, reduced, suspended, or cancelled, or otherwise lapse for any reason during the term of this Agreement, then **TRUSTS** may terminate this Agreement for cause and **CONTRACTOR** shall also be liable and responsible for any claim by **TRUSTS** on their own behalf or on behalf of another, for:

- a. any loss or damages, including direct, indirect, and consequential; and
- b. any cost or expense, including attorney fees, court costs and administrative expenses; and
- c. any other loss, damage cost or expense which would have been covered or assumed by the insurer had the changed, reduced, suspended, terminated, or lapsed policy been in effect without limitation as to the policy amount.

(2) The **TRUSTS** reserves the right to withhold payment of any funds otherwise due **CONTRACTOR** to pay any claim or potential claim which it reasonably believes would otherwise be payable under the insurance policy but only if there is a lapse or termination of any required insurance coverage, or if there is a change in coverage and such change results in a material reduction in the dollar value of coverage or materially changes the policy's scope of coverage.

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WITNESS the hands of the parties hereto:

The undersigned individual states that the Proposer will be bound by the terms and conditions of this Professional Services Agreement.

TO BE COMPLETED BY THE PROPOSER:

| | | |
|---|-----------|-----------|
|  | President | 4/17/2023 |
| Signature of Individual | Title | Date |

Note: If individual signing is not the owner or an officer of the business or corporation a letter of authorization is to be included. For instance, if a Salesman or Manager signs this form, a letter of authorization is to be attached. Corporate Seal will be accepted in lieu of an authorization letter if affixed to this document.

Chris MacDonald
Printed Name of Individual

CPM Pipelines 3625 E Atlanta Avenue, Unit 2 Phoenix, AZ 85040
Company Name and Address [Please Print] Zip Code

480-206-2309
Telephone Number and Fax Number if any

TO BE COMPLETED BY THE NOTARY:

State of * Arizona)
County of * Maricopa) SS.
[State and a County where notarized must be written in.])

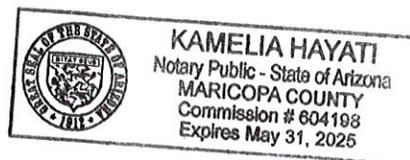
Signed and sworn to before me this 17th day of April, 2023

by Chris MacDonald
[Printed name of individual who signed above.]

My Commission number: 5,31,2025-604198

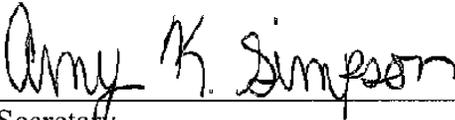
My Commission expires: 5,31,2025
[Date/Year]


Signature of Notary Public

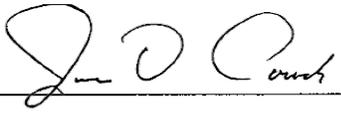


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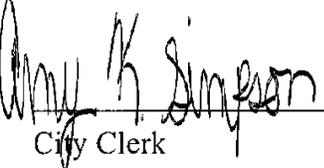
This Professional Services Agreement was **approved** by The Oklahoma City Water Utilities Trust and signed by the Chair on this 9TH day of MAY, 2023.


Secretary

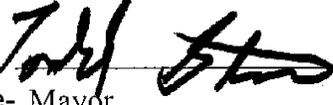

Chair



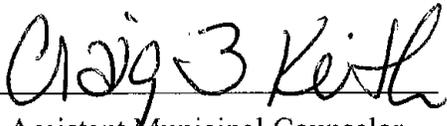
This Professional Services Agreement was **concurred** by The City of Oklahoma City and signed by the Mayor this 23RD day of MAY, 2023.


City Clerk


Vice- Mayor



Reviewed for form and legality


Assistant Municipal Counselor

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