

**LUNA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**Linda M. Smrkovsky  
Chair**

**Barbara L. Reedy  
Member**

**John S. Sweetser  
Member**

**Monday, September 19, 2022  
10:00 a.m.  
Agenda  
Special Meeting  
Luna County Courthouse**

Meeting ID: [meet.google.com/nyy-zrkt-xzc](https://meet.google.com/nyy-zrkt-xzc) To dial in: 1 720-500-4352 PIN: 612 467 015#

1. **Call to Order:** Chair Linda Smrkovsky to commence meeting (At this time, please silence your cell phones and any other electronic devices) Pledge of Allegiance, State Pledge.
2. **Roll Call:**
3. **Approval of Agenda:**
4. **Public Comment:** The Public has the opportunity to provide comments at this time pertaining to items on the agenda only. Please be advised that this is not a question and answer period. Your comments specific to the agenda items will be limited to three minutes unless the Board of County Commissioners requests more information. The time limit and opportunity to speak is given in an effort to allow public input on business matters of the County to move the agenda forward in a prompt yet efficient manner. Comments will not be allowed on individual agenda items as they are discussed by the Commissioners during new business.
5. **Call for Ordinance:**
  - a. Resolution 22-67; Call to Adopt Ordinance 115; Increasing the size of the Board of County Commissioners to Five Members  
**MOTION AND ROLL CALL VOTE**

**6. New Business:**

- a. Resolution 22-68; Amending Resolution 21-50: Luna County School Bus Routes (SBR) Project

**MOTION AND ROLL CALL VOTE**

- b. Resolution 22-69 ; Amending Resolution 21-45: Authorization to Participate in a Transportation Project Fund by NMDOT: Columbus International Gateway Project

**MOTION AND ROLL CALL VOTE**

- c. Resolution 22-70; Authorization to Participate in a Transportation Project Fund (TPF) by NMDOT: Camino Doce Roadway & Drainage

**MOTION AND ROLL CALL VOTE**

- d. Resolution 22-71; Authorization to Participate in a Transportation Project Fund (TPF) by NMDOT: North Boundary Road

**MOTION AND ROLL CALL VOTE**

- e. Resolution 22-72; Authorizing Submission of an Application to the Water Trust Board for Construction Services for the Florida Mountains, Rockhound Park and Cookes Peak Flooding Areas

**MOTION AND ROLL CALL VOTE**

- f. Certification of 2022 Property Tax Rates

**MOTION AND ROLL CALL VOTE**

- g. Letter of Intent Fort Sill Apache Tribe and Luna County

**MOTION AND ROLL CALL VOTE**

- h. Deming Luna County Commission on Aging Appointment of Board Member-Debra French

**MOTION AND ROLL CALL VOTE**

**7. Public Hearing:**

- a. Ordinance 76 Amended; Tax Obligation for Land Transfers, Divisions and Recombinations.

**PUBLIC HEARING**

**MOTION AND ROLL CALL VOTE**

- b. Ordinance 113; An Ordinance Approving a Local Economic Development Project for USDA Certified Meat Processing Facility in Luna County.

**PUBLIC HEARING**

**MOTION AND ROLL CALL VOTE**

- c. Ordinance 114; An Ordinance Approving Application for a loan from the New Mexico Clean Water State Revolving Fund

**PUBLIC HEARING**

**MOTION AND ROLL CALL VOTE**

**Public Hearing Continued:**

- d. Variance Request for the Village of Columbus Berm Project surrounding properties: Ordinance 56; Subdivision Regulations, and from having to file a Claim of Exemption

**PUBLIC HEARING**

**MOTION AND ROLL CALL VOTE**

- e. Variance Request for Luna County Property ; Deming Ranchettes Lots 9,10,35 & 36 Block 10 Unit 83. Allowing a motorhome as a permanent occupied residence

**PUBLIC HEARING**

**MOTION AND ROLL CALL VOTE**

**8. Upcoming Meetings/ Events (unless otherwise specified):**

Regular Meeting: October 6, 2022 at 10:00 a.m.

**9. Adjourn:**

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19<sup>th</sup> day of September 2022, the following proceedings were had and entered of record.*

**RESOLUTION NO. 22-67**

**CALL TO ADOPT ORDINANCE 115**

**WHEREAS**, pursuant to Section 4-37-1, NMSA 1978, grants Counties, through the Board of County Commissioners the power to make, publish and repeal ordinances;

**WHEREAS**, Section 4-37-7, NMSA 1978, Ordinances governs the proposal of ordinances.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners hereby give notice of its intent to consider the adoption of Ordinance 115; Increasing the Size of the Board of County Commissioners to Five Members, at the Special Meeting on September 19, 2022, at 10:00 a.m. or as soon thereafter as the matter may be heard in the Luna County Courthouse, 700 S. Silver Ave., Deming, New Mexico.

**BE IT FURTHER RESOLVED** that the Luna County Manager is authorized to take all necessary action necessary to properly place the issue of the adoption of Ordinance 115 before the Board of County Commissioners, including but not limited to, the publication of title and a general summary of the proposed adoptions and making a copy of the proposed available to interested persons beginning with the date of publication, but no later than two weeks prior to the October 6, 2022 Regular Meeting.

**DONE THIS 19TH DAY OF SEPTEMBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

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Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

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Berenda McWright,  
County Clerk

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Barbara L. Reedy,  
Commissioner, District 1

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John S. Sweetser,  
Commissioner, District 3

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19<sup>th</sup> day of September 2022, the following proceedings were had and entered of record.*

**RESOLUTION NO.22-68**

**Amended Resolution 21-50 Luna County SBR Project**

**PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED  
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION**

WHEREAS, the County of Luna and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be \$160,000.00 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 75% or \$120,000.00

And

- b. Luna County's proportional matching share shall be 25% or \$40,000.00

TOTAL PROJECT COST IS \$160,000.00

Luna County shall pay all costs, which exceed the total amount of \$160,000.00.

Now therefore, be it resolved in official session that Luna County determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on December 31, 2022 and Luna County incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the Luna County to re-enter into Cooperative Agreement Control Number HW2 L100515 with the New Mexico Department of Transportation for LGRF Project for year 2021–2022 to change the terms and scope of this project to “Mill 10” existing chip seal, base and compact. Apply 3 lifts of chip seal to improve skid resistance, fog seal, and conform shoulders back to original condition, apply safety striping and signage of Lucca Rd SW from the intersection of Dona Ana Rd SW and Hermanas Grade SW south 7 miles to Sunshine Rd SW to EOP within the control of the Luna County in Deming, Luna County, New Mexico.

**DONE THIS 19TH DAY OF SEPTEMBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

\_\_\_\_\_  
Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

\_\_\_\_\_  
Berenda McWright,  
County Clerk

\_\_\_\_\_  
Barbara L. Reedy,  
Commissioner, District 1

\_\_\_\_\_  
John S. Sweetser,  
Commissioner, District 3

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19<sup>th</sup> day of September 2022, the following proceedings were had and entered of record.*

**RESOLUTION NO. 22-69**

**Amended Resolution 21-45 Luna County TPF Project**

***COLUMBUS INTERNATIONAL GATEWAY PROJECT, LUNA COUNTY***

**PARTICIPATION IN THE TRANSPORTATION PROJECT FUND PROGRAM  
ADMINISTERED BY THE NEW MEXICO DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the New Mexico Department of Transportation is soliciting applications for the Department's Fiscal Year 2022 Transportation Project Fund; and

**WHEREAS**, the purpose of the Transportation Project Fund is to assist local and tribal governments with the following: (1) environmental and other studies; (2) planning; (3) design; (4) construction; and (5) acquisition of rights of way necessary for the development of transportation infrastructure, which includes highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking; and

**WHEREAS**, having reviewed and considered the regulations and the application covering administration and use of said funds; and

**WHEREAS**, **LUNA COUNTY** and the New Mexico Department of Transportation have entered into a joint and coordinated effort.

**WHEREAS**, the total cost of the project will be **\$5,898,974.44** to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 95% or **\$4,873,065.85**
- b. LUNA COUNTY's proportional matching share shall be 5% or **\$256,477.15**  
and
- c. FY23 TPF Shortfall Assistance Department shall be 100% equal to **\$769,431.44**

**TOTAL PROJECT COST IS \$5,898,974.44**

**LUNA COUNTY** shall pay all costs, which exceed the total amount of **\$5,898,974.44**.

Now therefore, be it resolved in official session that **LUNA COUNTY** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2024 and that **LUNA COUNTY** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

**NOW THEREFORE**, be it resolved by **LUNA COUNTY** to enter into a Cooperative Agreement for Project Control Number **PLATA ROAD** with the New Mexico Department of Transportation for the TPF Program for year 2021 – 2022. The scope of the project is for final plan, design, permitting, construction and construction management services for the Columbus International Gateway Roadway Improvement Project within the control of **LUNA COUNTY** in **DEMING**, New Mexico to include full roadway reconstruction consisting of existing roadway demolition, site clearing and grubbing, subgrade preparation, base course, prime coat application, hot mix asphalt, new curb and gutter and permanent signing and striping. Drainage improvements consist of a proposed subsurface drainage system network, curb drop inlets, roadside concrete swale drainage appurtenances and excavation and grading of a detention pond.

Proposed Routes and Termini include:

1. Contento Avenue from NM-11 to Calle Quinta Road
  - a. Length = 1,400 linear feet.
2. Calle Quinta Road from Contento Avenue to Plata Road
  - a. Length = 1,250 linear feet.
3. Plata Road from NM-11 to 3,650 linear ft. west of NM-11.
  - a. Length = 3,650 linear feet.

**HEREBY** requests that the New Mexico Department of Transportation consider and approve said application being in accordance with the regulations governing use and expenditures of said funds.



**DONE THIS 19TH DAY OF SEPTEMBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

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Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

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Berenda McWright,  
County Clerk

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Barbara L. Reedy,  
Commissioner, District 1

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John S. Sweetser,  
Commissioner, District 3

|                     |                   |
|---------------------|-------------------|
| <b>Contract No.</b> | <b>D19105/1</b>   |
| <b>Vendor No.</b>   | <b>0000054390</b> |
| <b>Control No.</b>  | <b>HW2LP10025</b> |

## FIRST AMENDMENT TO TRANSPORTATION PROJECT FUND

This **First Amendment** is to the Agreement entered into between the New Mexico Department of Transportation (Department) and the Luna County (Public Entity). This Amendment is effective as of the date of the last party to sign on the signature page.

### RECITALS

**Whereas**, the Department and the Public Entity entered into an Agreement, Contract No. D19105 , on 10/18/2021 and,

**Whereas**, Section 19 allows for modification of the Agreement by an instrument in writing executed by the parties; and,

**Whereas**, the Department and the Public Entity want to provide additional funding for projects experiencing shortfalls due to rising inflation; and,

**Whereas**, the State Transportation Commission approved the Project changes on August 18, 2022 ; and,

**Whereas**, the parties agree to modify this Agreement.

**Now, therefore**, the Department and the Public Entity agree as follows:

1. Section 2a and 2b, Project Funding, is deleted and replaced by the following:

#### **2. Project Funding.**

- a. The estimated total cost for the Project is Five Million Eight Hundred Ninety Eight Thousand Nine Hundred Seventy Four Dollars and Forty Four Cents (**\$5,898,974.44**) to be funded in proportional share by the parties as follows:

1. FY22 TPF Funds

Department's share shall be 95%

**\$4,873,065.85**

Columbus International Gateway: Final plan, design, permitting, construction and construction management services for the Columbus International Gateway Roadway Improvement Project to include full roadway reconstruction consisting

of existing roadway demo-Columbus International Gateway: Final plan, design, permitting, construction and construction management services for the Columbus International Gateway Roadway Improvement Project to include full roadway reconstruction consisting of existing roadway demo

- |  |                       |
|--|-----------------------|
| 2. The Public Entity's required proportional matching<br>Share shall be 5%<br>For purpose stated above | <b>\$256,477.15</b>   |
| 3. <b><u>Total Project FY22 Funding</u></b>  | <b>\$5,129,543.00</b> |
| 4. FY23 TPF Shortfall Assistance<br>Department Share shall be 100%                                     | <b>\$769,431.44</b>   |
| 5. <b><u>Total Project Funding</u></b>   | <b>\$5,898,974.44</b> |
- b. The Public Entity shall pay all Project costs, which exceed the total amount of Five Million Eight Hundred Ninety Eight Thousand Nine Hundred Seventy Four Dollars and Forty Four Cents (**\$5,898,974.44**).

All other obligations set forth in the Original Agreement shall remain in full force and effect unless expressly amended or modified by this First Amendment.

**The remainder of this page is intentionally left blank.**

**In Witness Whereof**, each party is signing this Agreement on the date stated opposite that party's signature.

**New Mexico Department of Transportation**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Assistant General Counsel

Luna County

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Luna County Clerk

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19<sup>th</sup> day of September 2022, the following proceedings were had and entered of record.*

**EXHIBIT B**

**RESOLUTION 22-70**

**Luna County TPF Project**

**PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM  
ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the **Luna County** and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

**WHEREAS**, the total cost of the project will be \$225,000 to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 95% or \$213,750.00

and

b. **Luna County**'s proportional matching share shall be 5% or \$11,250.00

TOTAL PROJECT COST IS \$225,000.00

The **Luna County** shall pay all costs, which exceed the total amount of \$225,000.00.

Now therefore, be it resolved in official session that **Luna County** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2025 and the **Luna County** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

Now therefore, be it resolved by the **Luna County** to enter into Cooperative Agreement for Project Control Number **LP10046** with the New Mexico Department of Transportation for the TPF Program for year 2023 for Camino Doce Roadway & Drainage Design-Survey and Design of Roadway & Drainage Improvements on Camino Doce from Hermanas Rd to Mccan Rd (excluding NM11 ROW)- within the control of the **Luna County** in New Mexico.

**DONE THIS 19TH DAY OF SEPTEMBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

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Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

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Berenda McWright,  
County Clerk

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Barbara L. Reedy,  
Commissioner, District 1

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John S. Sweetser,  
Commissioner, District 3

Contract No. \_\_\_\_\_  
Vendor No. 0000054390  
Control No. HW2LP10046

**TRANSPORTATION PROJECT FUND  
GRANT AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **Luna County** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-78 and 18.27.6 NMAC, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Transportation Project Funds (TPF) to the Public Entity for the following project scope **Camino Doce Roadway & Drainage Design-Survey and Design of Roadway & Drainage Improvements on Camino Doce from Hermanas Rd to Mccan Rd (excluding NM11 ROW)** (Project or CN LP10046). This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is Two Hundred Twenty Five Thousand Dollars and No Cents **(\$225,000.00)** to be funded in proportional share by the parties as follows:
  - 1. Department's share shall be 95% **\$213,750.00**  
Camino Doce Roadway & Drainage Design-Survey and Design of Roadway & Drainage Improvements on Camino Doce from Hermanas Rd to Mccan Rd (excluding NM11 ROW)
  - 2. The Public Entity's required proportional matching Share shall be 5% **\$11,250.00**  
For purpose stated above
  - 3. Total Project Cost **\$225,000.00**
- b. The Public Entity is responsible for all costs that exceed Project funding.
- c. All allocated funds must be spent by **June 30, 2025**.
- d. The Public Entity represents that no federal funds will be used to finance the Project.
- e. The Public Entity must repay Project funding to the Department if:
  - 1. The Project is cancelled or partially performed.
  - 2. A final audit conducted by the Department at Project completion determines the following: an overpayment, unexpended monies or ineligible expenses.

**3. The Department:**

- a. Shall distribute the funds, identified in Section 2a1, in a lump sum to the Public Entity after:
  - 1. The Department has received this Agreement fully executed with a Resolution of Sponsorship attached as Exhibit B.
  - 2. Receipt of a letter requesting funds, which includes the following Project documents: Notice of Award/Work Order and Notice to Proceed for the Project.
  - 3. If a Department's or another entity's right-of-way is involved, a permit or letter of approval/authorization, from the entity with jurisdiction over the Project right-of-way.
- b. Will not:
  - 1. Perform any detailed technical reviews of Project scope, cost, budget, schedule, design or other related documents;
  - 2. Have any involvement in the construction phase;
  - 3. Be involved in permit preparation or the review or coordination with regulatory agencies.
  - 4. Conduct periodic assurance inspections or comparison material testing.
  - 5. Participate in resolving bidding and contract disputes between the Public Entity and contractors.
- c. May perform Project monitoring that might consist of the following:
  - 1. Review of Project status to ensure that project goals, objectives, performance requirements, timelines, milestone completion budgets and other guidelines are being met.
  - 2. Request written Project status reports.
  - 3. Conduct a review of the Local Entity's performance and administration of the Project funds identified in Section 2a.
- d. Reserves the right, upon receipt of the Public Entity's Certification of Completion, Exhibit A, to request additional documents that demonstrate Project completion.
- e. If required, the District Engineer or designee, will conduct a Project review to determine if permit is required from the Department. If there is a determination that a permit is not required, a letter of approval and authorization will be forwarded to the Public Entity.

#### **4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- c. Be responsible for all design activities necessary to advance the Project to construction and coordinate construction.
- d. Unless otherwise specified in a letter of authorization or permit, design and construct the Project in accordance with the Public Entity's established design standards.
- e. Have sole responsibility and control of all project phases and resulting quality of the completed work.
- f. If the Project is in full or on a portion of a state highway, on a Department right of way or a National Highway System route:
  - 1. Obtain from the Department a permit in accordance with 18.31.6.14 NMAC, State Highway Access Management Requirements or a letter of authorization; and
  - 2. Design and construct the Project in accordance with standards established by the Department.



- g. Adopt a written resolution of Project support that includes a commitment to funding, ownership, liability and maintenance. The resolution is attached to this Agreement as Exhibit B.
- h. Consider placing pedestrian, bicycle and equestrian facilities in the Project design in accordance with NMSA 1978, Section 67-3-62.
- i. Comply with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.
- j. Be responsible for all permit preparation, review and coordination with regulatory agencies.
- k. Cause all designs, plans, specifications and estimates to be performed under the direct supervision of a Registered New Mexico Professional Engineer, in accordance with NMSA 1978 Section 61-23-26.
- l. Allow the Department to perform a final inspection of the Project and all related documentation to determine if the Project was constructed in accordance with the provisions of this Agreement. At the Department's request, provide additional documentation to demonstrate completion of the required terms and conditions.
- m. Meet with the Department, as needed, or provide Project status reports within thirty (30) days of request.
- n. Within 60 days after Project completion, provide the Certification of Completion, which is attached as Exhibit A, that it has complied with the requirements of 18.27.6 NMAC and this Agreement.
- o. Upon completion, maintain all the Public Entity's facilities constructed or reconstructed under this Agreement.

##### **5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Unless otherwise indicated in a letter of authorization, the Project will not be incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- c. Pursuant to NMSA 1978, Section 67-3-78, Transportation Project Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- d. The requirements of 18.27.6 NMAC are incorporated by reference.
- e. The inability to properly complete and administer the Project may result in the Public Entity being denied future grant funding.

##### **6. Term.**

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on the earliest of the following dates: (a) Department receipt of the Certification of Completion or (b) **June 30, 2025**. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60)

days prior to the expiration date to ensure timely processing of an Amendment. Neither party shall have any obligation after said date except as stated in Sections 2e, 4l, 4n and 7.

#### **7. Termination.**

If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) days written notice. This Agreement may also be terminated pursuant to Section 15. Neither party has any obligation after termination, except as stated in Sections 2e, 4l, 4n and 7.

#### **8. Third Party Beneficiary.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

#### **9. New Mexico Tort Claims Act.**

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.*

#### **10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

#### **11. Scope of Agreement.**

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this Agreement.

#### **12. Terms of this Agreement.**

The terms of this Agreement are lawful; performance of all duties and obligations must conform

with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

### **13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

### **14. Equal Opportunity Compliance.**

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

### **15. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity and the Legislature this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

### **16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five (5) years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

### **17. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

### **18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its

choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**19. Amendment.**

This Agreement may be amended by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**

**In witness whereof**, each party is signing this Agreement on the date stated opposite that party's signature.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

Date: \_\_\_\_\_

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: \_\_\_\_\_  
Assistant General Counsel

Date: \_\_\_\_\_

**Luna County**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### CERTIFICATION OF PROJECT COMPLETION

**Public Entity:**

**Control No. LP10046**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ certify in regard to Control No. **LP10046**:

1. That the Public Entity has complied with the terms and conditions of the requirements under this Agreement and 18.27.6 NMAC.
2. That all work in was performed in accordance with the Agreement.
3. That the total Project cost of \_\_\_\_\_, with New Mexico Department of Transportation 95% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ is accurate, legitimate, and appropriate for the Project.
4. That the Project was completed on \_\_\_\_\_ of \_\_\_\_\_, 20 \_\_\_\_\_

**In Witness Whereof,** \_\_\_\_\_ in his/her  
capacity as \_\_\_\_\_ of \_\_\_\_\_  
certify that the matters stated above are true to his/her knowledge and belief.

**Luna County**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Public Entity Clerk**

When completed, send Certification of Project Completion to the District Coordinator, New Mexico Department of Transportation.

**EXHIBIT B**  
**RESOLUTION**  
**Luna County**

PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM ADMINISTERED BY  
NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the **Luna County** and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$225,000 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 95% or \$213,750.00

and

- b. **Luna County**'s proportional matching share shall be 5% or \$11,250.00

TOTAL PROJECT COST IS \$225,000.00

The **Luna County** shall pay all costs, which exceed the total amount of \$225,000.00.

Now therefore, be it resolved in official session that **Luna County** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2025 and the **Luna County** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

Now therefore, be it resolved by the **Luna County** to enter into Cooperative Agreement for Project Control Number **LP10046** with the New Mexico Department of Transportation for the TPF Program for year 2023 for Camino Doce Roadway & Drainage Design-Survey and Design of Roadway & Drainage Improvements on Camino Doce from Hermanas Rd to Mccan Rd (excluding NM11 ROW)- within the control of the **Luna County** in New Mexico.

(Appropriate Signatures below (Council, Commission, School Board, Tribe, Pueblo, Nation, etc.))

\_\_\_\_\_  
**(PRINTED NAME, POSITION)**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**(PRINTED NAME, POSITION)**

\_\_\_\_\_  
DATE

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19<sup>th</sup> day of September 2022, the following proceedings were had and entered of record.*

**EXHIBIT B**

**RESOLUTION NO. 22-71**

**Luna County TPF Project**

PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM  
ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

**WHEREAS**, the **Luna County** and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

**WHEREAS**, the total cost of the project will be \$300,000 to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 95% or \$285,000.00

and

b. **Luna County**'s proportional matching share shall be 5% or \$15,000.00

TOTAL PROJECT COST IS \$300,000.00

The **Luna County** shall pay all costs, which exceed the total amount of \$300,000.00.

**NOW THEREFORE**, be it resolved in official session that **Luna County** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2025 and the **Luna County** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

**NOW THEREFORE**, be it resolved by the **Luna County** to enter into Cooperative Agreement for Project Control Number **LP10047** with the New Mexico Department of Transportation for the TPF Program for year 2023 for North Boundary Road-Planning and Design of North Boundary Road from Terra Road to San Diego Road- within the control of the **Luna County** in New Mexico.



**DONE THIS 19TH DAY OF SEPTEMBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

\_\_\_\_\_  
Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

\_\_\_\_\_  
Berenda McWright,  
County Clerk

\_\_\_\_\_  
Barbara L. Reedy,  
Commissioner, District 1

\_\_\_\_\_  
John S. Sweetser,  
Commissioner, District 3

Contract No. \_\_\_\_\_  
Vendor No. 0000054390  
Control No. HW2LP10047

## TRANSPORTATION PROJECT FUND GRANT AGREEMENT

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **Luna County** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-78 and 18.27.6 NMAC, the parties agree as follows:

### 1. Purpose.

The purpose of this Agreement is to provide Transportation Project Funds (TPF) to the Public Entity for the following project scope **North Boundary Road-Planning and Design of North Boundary Road from Terra Road to San Diego Road** (Project or CN LP10047). This Agreement specifies and delineates the rights and duties of the parties.

### 2. Project Funding.

- a. The estimated total cost for the Project is Three Hundred Thousand Dollars and No Cents (**\$300,000.00**) to be funded in proportional share by the parties as follows:
  1. Department's share shall be 95% **\$285,000.00**  
North Boundary Road-Planning and Design of North Boundary Road from Terra Road to San Diego Road
  2. The Public Entity's required proportional matching  
Share shall be 5% **\$15,000.00**  
For purpose stated above
  3. Total Project Cost **\$300,000.00**
- b. The Public Entity is responsible for all costs that exceed Project funding.
- c. All allocated funds must be spent by **June 30, 2025**.
- d. The Public Entity represents that no federal funds will be used to finance the Project.
- e. The Public Entity must repay Project funding to the Department if:
  1. The Project is cancelled or partially performed.
  2. A final audit conducted by the Department at Project completion determines the following: an overpayment, unexpended monies or ineligible expenses.

### 3. The Department:

- a. Shall distribute the funds, identified in Section 2a1, in a lump sum to the Public Entity after:

1. The Department has received this Agreement fully executed with a Resolution of Sponsorship attached as Exhibit B.
  2. Receipt of a letter requesting funds, which includes the following Project documents: Notice of Award/Work Order and Notice to Proceed for the Project.
  3. If a Department's or another entity's right-of-way is involved, a permit or letter of approval/authorization, from the entity with jurisdiction over the Project right-of-way.
- b. Will not:
1. Perform any detailed technical reviews of Project scope, cost, budget, schedule, design or other related documents;
  2. Have any involvement in the construction phase;
  3. Be involved in permit preparation or the review or coordination with regulatory agencies.
  4. Conduct periodic assurance inspections or comparison material testing.
  5. Participate in resolving bidding and contract disputes between the Public Entity and contractors.
- c. May perform Project monitoring that might consist of the following:
1. Review of Project status to ensure that project goals, objectives, performance requirements, timelines, milestone completion budgets and other guidelines are being met.
  2. Request written Project status reports.
  3. Conduct a review of the Local Entity's performance and administration of the Project funds identified in Section 2a.
- d. Reserves the right, upon receipt of the Public Entity's Certification of Completion, Exhibit A, to request additional documents that demonstrate Project completion.
- e. If required, the District Engineer or designee, will conduct a Project review to determine if permit is required from the Department. If there is a determination that a permit is not required, a letter of approval and authorization will be forwarded to the Public Entity.

#### **4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- c. Be responsible for all design activities necessary to advance the Project to construction and coordinate construction.
- d. Unless otherwise specified in a letter of authorization or permit, design and construct the Project in accordance with the Public Entity's established design standards.
- e. Have sole responsibility and control of all project phases and resulting quality of the completed work.
- f. If the Project is in full or on a portion of a state highway, on a Department right of way or a National Highway System route:
  1. Obtain from the Department a permit in accordance with 18.31.6.14 NMAC, State Highway Access Management Requirements or a letter of authorization; and
  2. Design and construct the Project in accordance with standards established by the Department.
- g. Adopt a written resolution of Project support that includes a commitment to funding, ownership, liability and maintenance. The resolution is attached to this Agreement as

Exhibit B.

- h. Consider placing pedestrian, bicycle and equestrian facilities in the Project design in accordance with NMSA 1978, Section 67-3-62.
- i. Comply with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.
- j. Be responsible for all permit preparation, review and coordination with regulatory agencies.
- k. Cause all designs, plans, specifications and estimates to be performed under the direct supervision of a Registered New Mexico Professional Engineer, in accordance with NMSA 1978 Section 61-23-26.
- l. Allow the Department to perform a final inspection of the Project and all related documentation to determine if the Project was constructed in accordance with the provisions of this Agreement. At the Department's request, provide additional documentation to demonstrate completion of the required terms and conditions.
- m. Meet with the Department, as needed, or provide Project status reports within thirty (30) days of request.
- n. Within 60 days after Project completion, provide the Certification of Completion, which is attached as Exhibit A, that it has complied with the requirements of 18.27.6 NMAC and this Agreement.
- o. Upon completion, maintain all the Public Entity's facilities constructed or reconstructed under this Agreement.

#### **5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Unless otherwise indicated in a letter of authorization, the Project will not be incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- c. Pursuant to NMSA 1978, Section 67-3-78, Transportation Project Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- d. The requirements of 18.27.6 NMAC are incorporated by reference.
- e. The inability to properly complete and administer the Project may result in the Public Entity being denied future grant funding.

#### **6. Term.**

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on the earliest of the following dates: (a) Department receipt of the Certification of Completion or (b) **June 30, 2025**. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment. Neither party shall have any obligation after said date except as stated in Sections 2e, 4l, 4n and 7.

## **7. Termination.**

If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) days written notice. This Agreement may also be terminated pursuant to Section 15. Neither party has any obligation after termination, except as stated in Sections 2e, 4l, 4n and 7.

## **8. Third Party Beneficiary.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

## **9. New Mexico Tort Claims Act.**

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.*

## **10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

## **11. Scope of Agreement.**

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this Agreement.

## **12. Terms of this Agreement.**

The terms of this Agreement are lawful; performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

**13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in each contract and subcontract at all tiers.

**14. Equal Opportunity Compliance.**

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

**15. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity and the Legislature this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five (5) years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

**17. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

**18. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**19. Amendment.**

This Agreement may be amended by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**

**In witness whereof**, each party is signing this Agreement on the date stated opposite that party's signature.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Assistant General Counsel

**Luna County**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT A

### CERTIFICATION OF PROJECT COMPLETION

**Public Entity:**

**Control No. LP10047**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ certify in regard to Control No. **LP10047**:

1. That the Public Entity has complied with the terms and conditions of the requirements under this Agreement and 18.27.6 NMAC.
2. That all work in was performed in accordance with the Agreement.
3. That the total Project cost of \_\_\_\_\_, with New Mexico Department of Transportation 95% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ is accurate, legitimate, and appropriate for the Project.
4. That the Project was completed on \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_

**In Witness Whereof,** \_\_\_\_\_ in his/her  
capacity as \_\_\_\_\_ of \_\_\_\_\_  
certify that the matters stated above are true to his/her knowledge and belief.

**Luna County**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Public Entity Clerk**

When completed, send Certification of Project Completion to the District Coordinator, New Mexico Department of Transportation.

**EXHIBIT B**  
**RESOLUTION**

**Luna County**

PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM ADMINISTERED BY  
NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the **Luna County** and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$300,000 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 95% or \$285,000.00

and

- b. **Luna County**'s proportional matching share shall be 5% or \$15,000.00

TOTAL PROJECT COST IS \$300,000.00

The **Luna County** shall pay all costs, which exceed the total amount of \$300,000.00.

Now therefore, be it resolved in official session that **Luna County** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2025 and the **Luna County** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

Now therefore, be it resolved by the **Luna County** to enter into Cooperative Agreement for Project Control Number **LP10047** with the New Mexico Department of Transportation for the TPF Program for year 2023 for North Boundary Road-Planning and Design of North Boundary Road from Terra Road to San Diego Road- within the control of the **Luna County** in New Mexico.

(Appropriate Signatures below (Council, Commission, School Board, Tribe, Pueblo, Nation, etc.))

\_\_\_\_\_  
**(PRINTED NAME, POSITION)**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**(PRINTED NAME, POSITION)**

\_\_\_\_\_  
DATE

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19<sup>th</sup> day of September 2022, the following proceedings were had and entered of record.*

**RESOLUTION #22-72**

A RESOLUTION BY THE COUNTY COMMISSIONERS, THE GOVERNING BODY OF LUNA COUNTY NEW MEXICO, WHEREBY THE COUNTY COMMISSION INSTRUCTS COUNTY STAFF TO SUBMIT AN APPLICATION FOR THE FUNDS THROUGH THE WATER TRUST BOARD FOR PLAN AND DESIGN SERVICES FOR THE FLORIDA MOUNTAINS, ROCKHOUND PARK, AND COOKES PEAK FLOODING AREAS.

WHEREAS, *Luna County* ("Governmental Unit") is a qualified entity and the *County Commissioners* ("Government Body") has the authority to authorize public projects for benefit of the Governmental Unit; and

WHEREAS, the Water Trust Board ("Board") has instituted a program for financing of projects and has developed an application procedure whereby the Governing Body may submit an application ("Application") for financial assistance from the Board for public projects; and

WHEREAS, the Governing Body recommends that an application be filed with the Water Trust Board for Plan and Design Services for the Florida Mountains, Rockhound Park, and Cookes Peak Flooding Areas.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSIONERS, THE GOVERNING BODY OF LUNA COUNTY, NEW MEXICO that the filing of an application to the New Mexico Water Trust Board for funding in the 2022 Water Project Fund funding cycle is hereby authorized. The project type falls under Flood Prevention and proposes to plan and design preventative measures to control flooding of known areas off the Florida Mountains, Rockhound Park, and Cookes Peak, control flow of downstream draining, protecting homes and property washouts year after year. The financial assistance requested is in the amount of \$1,500,00.00. Luna County hereby pledges the required 10% local match in the amount of \$150,000.00 in support of the application, for which funds are currently available in the General Fund.

1. That all action (not consistent with the provision hereof) heretofore taken by the Governing body and the officers and employees thereof directed toward the Application and the Project, and the same is hereby ratified, approved, and confirmed.
2. That the Application authorized by the Governing Body, be and the same is hereby approved and confirmed.
3. That the officers and employees of the Governing Body are hereby directed and requested to submit the completed Application to the Board for its review, and are further authorized to take such other actions as may be requested by the Board in its consideration and review of the Application and to further proceed with arrangements for financing the Project.
4. All acts and resolutions in conflict with this resolution are hereby rescinded, annulled, and repealed.
5. This resolution shall take effect immediately upon its adoption.

**DONE THIS 19TH DAY OF SEPTEMBER, 2022**

by the Board of County Commissioners of Luna County

**ATTEST:**

---

Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

---

Berenda McWright,  
County Clerk

---

Barbara L. Reedy,  
Commissioner, District 1

---

John S. Sweetser,  
Commissioner, District 3



Michelle Lujan Grisham  
GOVERNOR

State of New Mexico  
Department of Finance & Administration  
180 Bataan Memorial Building  
Santa Fe, New Mexico 87501  
Phone: (505) 827-4985  
Fax: (505) 827-4984  
www.nmdfa.state.nm.us

Deborah K. Romero  
Cabinet Secretary

September 1, 2022

The Honorable Linda Smrkovsky  
Luna County  
700 South Silver Ave.  
P.O. Box 551  
Deming, NM 88031

Order Setting Property Tax Rates - 2022 Property Tax Year

Dear Commissioner Smrkovsky,

Pursuant to NMSA 1978, Sections 7-37-7(A) and 7-38-33(A), I issue this order setting the 2022 tax rates in the attached Certificate of Property Tax Rates (Certificate) for all governmental units imposing rates in your county.

NMSA 1978, Section 7-38-34 requires the Board of County Commissioners (Board) to issue and deliver to the County Assessor its own written order imposing these rates within five days of its receipt of this rate-setting order. **Before the Board issues its order, the county is responsible for ensuring that the rates are correct and must notify the Local Government Division of the Department of Finance and Administration of any errors, in accordance with 3.6.50.1 I (D) NMAC.** To further those efforts, please immediately share the Certificate with all governmental units (other than the State) that have rates included in the Certificate, so that they may also check the accuracy of their rates. In addition, please note that the "percentage change I" used as specified in NMSA 1978, Section 7-37-7.1 (A) for yield control calculations this year was the statutory maximum of 5% due to inflation and typically calculates higher mill rates.

Any questions concerning or suspected errors in the rates should be immediately brought to the attention of the Local Government Division's Budget and Finance Bureau Chief, Brenda L. Suazo-Giles, at 505-670-9817; or Special Projects Analyst, Jolene Gonzales, at 505-629-8204.

Sincerely,

DocuSigned by:  
*Deborah K. Romero*  
DCA2D2A1284C454

Deborah K. Romero  
Secretary of Finance & Administration

cc: Property Tax Division, Taxation & Revenue Department (via email)  
County Assessor (via email)  
County Treasurer (via email)

Enclosure(s): Certificate of Property Tax Rates

# Guide to Tax Year 2022 Tax Certificates in New Format!

Generated by Property Tax Module

LGBMS (Local Government Budget Management System)

Data imports eliminate manual key entry of:

- Assessed valuation data from TRD, Property Tax Division
- PED certified mill rates for public school districts
- HED certified mill rates for college districts
- Debt service mill rates

Automatic rollover of prior year mill rates used in yield control formula

Automatic calculation of yield-controlled mill rates

Standard tax certificates and tax distribution reports in PDF and exportable to Excel

Tax Districts are in alphanumeric order so please pay close attention to column headers as illustrated on next three pages!

# SAMPLE TAX CERTIFICATE

Certificate of Property Tax Rates in Mills - Chaves County - Tax Year 2021

I Certificate of Property Tax Rates in Mills  
Chaves County  
Tax Year 2021

Header with County Name and Tax Year

Columns sorted in alphanumeric order

Page 1 of Tax Certificate: State, County, Municipal and School District

OVERALL COUNTY NET TAXABLE VALUE \$1,349,936,475

County Net Taxable Value for all properties

| Property Classification  | Residential    | Non-Residential | Residential    | Non-Residential | Oil & Gas Production | Oil & Gas Equipment |
|--|----------------|-----------------|----------------|-----------------|----------------------|---------------------|
| <b>Tax District (IN = incorporated; OUT = unincorporated area)</b> | <b>1 IN R</b>  | <b>1 IN NR</b>  | <b>1 OUT R</b> | <b>1 OUT NR</b> | <b>1 OUT OGP</b>     | <b>1 OUT OGE</b>    |
| Municipality   | Roswell (City) | Roswell (City)  |                |                 |                      |                     |
| Public School District   | Roswell        | Roswell         | Roswell        | Roswell         | Roswell              | Roswell             |
| College District   | ENMU Roswell   | ENMU Roswell    | ENMU Roswell   | ENMU Roswell    | ENMU Roswell         | ENMU Roswell        |
| Taxable Value  | 542,883,831    | 251,422,937     | 153,263,691    | 173,635,443     | 3,879,978            | 870,733             |

## Mill Levies for State, County, Municipality, and School District

|   |               |               |               |               |               |               |
|---|---------------|---------------|---------------|---------------|---------------|---------------|
| State Debt Service  | 1.360         | 1.360         | 1.360         | 1.360         | 1.360         | 1.360         |
| <b>Total State</b>  | <b>1.360</b>  | <b>1.360</b>  | <b>1.360</b>  | <b>1.360</b>  | <b>1.360</b>  | <b>1.360</b>  |
| County Debt Service                                       | -             | -             | -             | -             | -             | -             |
| County Operational  | 5.354         | 10.350        | 5.354         | 10.350        | -             | -             |
| County Operational (Not Yield Controlled)                 | -             | -             | -             | -             | 10.350        | 10.350        |
| <b>Total County</b>                                       | <b>5.354</b>  | <b>10.350</b> | <b>5.354</b>  | <b>10.350</b> | <b>10.350</b> | <b>10.350</b> |
| Municipal Debt Service                                    | 0.502         | 0.502         | -             | -             | -             | -             |
| Municipal Operational                                     | 6.698         | 7.650         | -             | -             | -             | -             |
| <b>Total Municipal</b>                                    | <b>7.200</b>  | <b>8.152</b>  | <b>0.000</b>  | <b>0.000</b>  | <b>0.000</b>  | <b>0.000</b>  |
| School Building (House Bill 33 Levy)                      | -             | -             | -             | -             | -             | -             |
| School Capital Improvement (Senate Bill 9 Levy)           | 1.970         | 2.000         | 1.970         | 2.000         | 2.000         | 2.000         |
| School District Debt Service                              | 5.647         | 5.647         | 5.647         | 5.647         | 5.647         | 5.647         |
| School District Ed. Tech. Debt Service                    | -             | -             | -             | -             | -             | -             |
| School District Operational                               | 0.263         | 0.500         | 0.263         | 0.500         | 0.500         | 0.500         |
| <b>Total School District</b>                              | <b>7.880</b>  | <b>8.147</b>  | <b>7.880</b>  | <b>8.147</b>  | <b>8.147</b>  | <b>8.147</b>  |
| <b>Total State, County, Municipal and School District</b> | <b>21.794</b> | <b>28.009</b> | <b>14.594</b> | <b>19.857</b> | <b>19.857</b> | <b>19.857</b> |

## Certificate of Property Tax Rates in Mills - Chaves County - Tax Year 2021

Header with County Name and Tax Year

## Page 2 of Tax Certificate: College, Hospital and Special Districts

| Tax District   | 1 IN R | 1 IN NR | 1 OUT R | 1 OUT NR | 1 OUT OGP | 1 OUT OGE |
|--|--------|---------|---------|----------|-----------|-----------|
| <b>Mill Levies for College and Hospital</b>                            |        |         |         |          |           |           |
| College District Debt Service  | -      | -       | -       | -        | -         | -         |
| College District Operational   | 0.872  | 1.000   | 0.872   | 1.000    | 1.000     | 1.000     |
| Total Higher Education   | 0.872  | 1.000   | 0.872   | 1.000    | 1.000     | 1.000     |
| Total Hospital   | 0.000  | 0.000   | 0.000   | 0.000    | 0.000     | 0.000     |
| Total College and Hospital   | 0.872  | 1.000   | 0.872   | 1.000    | 1.000     | 1.000     |
| Grand Total State, County, Municipal, Public School, College, Hospital | 22.666 | 29.009  | 15.466  | 20.857   | 20.857    | 20.857    |
| <b>Total from Page 1 plus college and hospital</b>                     |        |         |         |          |           |           |
| <b>Mill Levies for Other Taxing Entities</b>                           |        |         |         |          |           |           |
| Cottonwood-Walnut Creek WSD  | -      | -       | -       | -        | -         | -         |
| Special District Debt Service  | -      | -       | -       | -        | -         | -         |
| Chaves Flood Control   | -      | -       | -       | -        | -         | -         |
| Special District Operational   | 1.498  | 1.498   | 1.498   | 1.498    | -         | -         |
| Pecos Valley Artesian Conservancy District                             | -      | -       | -       | -        | -         | -         |
| Special District Operational   | 3.975  | 3.975   | 3.975   | 3.975    | -         | -         |
| Chaves SWCD  | -      | -       | -       | -        | -         | -         |
| Special District Operational (Not Yield Controlled)                    | -      | -       | 1.000   | 1.000    | -         | -         |
| Penasco SWCD   | -      | -       | -       | -        | -         | -         |
| Special District Operational (Not Yield Controlled)                    | -      | -       | -       | -        | -         | -         |
| Central Valley SWCD  | -      | -       | -       | -        | -         | -         |
| Special District Operational (Not Yield Controlled)                    | -      | -       | -       | -        | -         | -         |
| Hagerman Dexter SWCD   | -      | -       | -       | -        | -         | -         |
| Special District Operational (Not Yield Controlled)                    | -      | -       | -       | -        | -         | -         |
| Upper Hondo SWCD   | -      | -       | -       | -        | -         | -         |
| Special District Operational (Not Yield Controlled)                    | -      | -       | -       | -        | -         | -         |
| Total Other  | 5.473  | 5.473   | 6.473   | 6.473    | 0.000     | 0.000     |
| Grand Total  | 28.139 | 34.482  | 21.939  | 27.330   | 20.857    | 20.857    |

**NEW! Special district rates listed under associated tax district column according to information on PTD forms.**



Amendments after September 1st summarised here (if applicable)

Certificate of Property Tax Rates in Mills  
Luna County  
Tax Year 2022

OVERALL COUNTY NET TAXABLE VALUE: \$643,478,227

| Property Classification   | Residential   | Non-Residential | Residential   | Non-Residential | Residential        | Non-Residential    |
|---|---------------|-----------------|---------------|-----------------|--------------------|--------------------|
| Tax District  | 1 IN R        | 1 IN NR         | 1 OUT R       | 1 OUT NR        | 1A IN R            | 1A IN NR           |
| Municipality  | Deming (City) | Deming (City)   |               |                 | Columbus (Village) | Columbus (Village) |
| Public School District  | Deming        | Deming          | Deming        | Deming          | Deming             | Deming             |
| College District  |               |                 |               |                 |                    |                    |
| Taxable Value   | 146,950,456   | 118,199,910     | 122,845,756   | 236,636,177     | 11,439,710         | 7,406,218          |
| <b>Mill Levies for State, County, Municipality, and School District</b> |               |                 |               |                 |                    |                    |
| State Debt Service  | 1.360         | 1.360           | 1.360         | 1.360           | 1.360              | 1.360              |
| <b>Total State</b>  | <b>1.360</b>  | <b>1.360</b>    | <b>1.360</b>  | <b>1.360</b>    | <b>1.360</b>       | <b>1.360</b>       |
| County Operational  | 10.497        | 11.850          | 10.497        | 11.850          | 10.497             | 11.850             |
| <b>Total County</b>   | <b>10.497</b> | <b>11.850</b>   | <b>10.497</b> | <b>11.850</b>   | <b>10.497</b>      | <b>11.850</b>      |
| Municipal Debt Service  | 0.549         | 0.549           |               |                 |                    |                    |
| Municipal Operational   | 4.475         | 4.475           |               |                 | 3.352              | 6.332              |
| <b>Total Municipal</b>  | <b>5.024</b>  | <b>5.024</b>    | <b>0.000</b>  | <b>0.000</b>    | <b>3.352</b>       | <b>6.332</b>       |
| School Capital Improvement (Senate Bill 9 Levy)                         | 2.000         | 2.000           | 2.000         | 2.000           | 2.000              | 2.000              |
| School District Debt Service  | 5.761         | 5.761           | 5.761         | 5.761           | 5.761              | 5.761              |
| School District Operational   | 0.500         | 0.500           | 0.500         | 0.500           | 0.500              | 0.500              |
| <b>Total School District</b>  | <b>8.261</b>  | <b>8.261</b>    | <b>8.261</b>  | <b>8.261</b>    | <b>8.261</b>       | <b>8.261</b>       |
| <b>Total State, County, Municipal and School District</b>               | <b>25.142</b> | <b>26.495</b>   | <b>20.118</b> | <b>21.471</b>   | <b>23.470</b>      | <b>27.803</b>      |

| <b>Tax District</b>   | <b>1 IN R</b> | <b>1 IN NR</b> | <b>1 OUT R</b> | <b>1 OUT NR</b> | <b>1A IN R</b> | <b>1A IN NR</b> |
|---|---------------|----------------|----------------|-----------------|----------------|-----------------|
| <b>Mill Levies for College and Hospital</b>                                   |               |                |                |                 |                |                 |
| <b>Total Higher Education</b>   | <b>0.000</b>  | <b>0.000</b>   | <b>0.000</b>   | <b>0.000</b>    | <b>0.000</b>   | <b>0.000</b>    |
| <b>Total Hospital</b>   | <b>0.000</b>  | <b>0.000</b>   | <b>0.000</b>   | <b>0.000</b>    | <b>0.000</b>   | <b>0.000</b>    |
| <b>Total College and Hospital</b>   | <b>0.000</b>  | <b>0.000</b>   | <b>0.000</b>   | <b>0.000</b>    | <b>0.000</b>   | <b>0.000</b>    |
| <b>Grand Total State, County, Municipal, Public School, College, Hospital</b> | <b>25.142</b> | <b>26.495</b>  | <b>20.118</b>  | <b>21.471</b>   | <b>23.470</b>  | <b>27.803</b>   |
| <b>Mill Levies for Other Taxing Entities</b>                                  |               |                |                |                 |                |                 |
| Caballo SWCD  |               |                |                |                 |                |                 |
| Special District Operational  |               |                | 1.000          | 1.000           |                |                 |
| <b>Total Other</b>  | <b>0.000</b>  | <b>0.000</b>   | <b>1.000</b>   | <b>1.000</b>    | <b>0.000</b>   | <b>0.000</b>    |
| <b>Grand Total</b>  | <b>25.142</b> | <b>26.495</b>  | <b>21.118</b>  | <b>22.471</b>   | <b>23.470</b>  | <b>27.803</b>   |

**Livestock Mill Levies**

| Category                 | Rate   | Applicable Tax Districts            |
|--------------------------|--------|-------------------------------------|
| Cattle Indemnity         | 10.000 | 1 OUT,1 OUT,1A IN,1A IN             |
| Sheep/Goats/Swine/Alpaca | 9.151  | 1 OUT,1 OUT,1 OUT,1 OUT,1 OUT,1 OUT |
| Dairy Cattle             | 5.000  | 1 OUT,1 OUT                         |
| Bison/Camelids/Ratite    | 8.558  | 1 OUT                               |
| Horses/Asses/Mules       | 8.608  | 1 OUT,1 IN,1 OUT,1 IN,1A IN,1A IN   |

**Other Assessments**

| Category | Taxing Entity | Description |
|----------|---------------|-------------|
|----------|---------------|-------------|

**Footnotes**

| Tax District | Classification | Assessment | Footnote |
|--------------|----------------|------------|----------|
|--------------|----------------|------------|----------|

**Amendments**

| Date | Description |
|------|-------------|
|------|-------------|

**LETTER OF INTENT**  
**FORT SILL APACHE TRIBE**

**AND**

**LUNA COUNTY, NEW MEXICO**

The purpose of this letter ("Letter Agreement") is to express the mutual intent of the Fort Sill Apache Tribe (herein referred to as "Tribe") and Luna County, New Mexico, (herein referred to as "Luna County") to work toward the finalization of a Cooperative/Services Agreement consistent with Federal and State law relating to the development of a tribal economic project on the Fort Sill Apache Tribe's Reservation lands located at Akela Flats, New Mexico and to mitigate for the use of Luna County services to support the proposed project.

1. **Purpose of this Letter of Agreement.** This Letter of Agreement will serve as a preliminary agreement between the two governments to work toward the finalization of a Cooperative/Services Agreement that will address the impacts the tribe's proposed Project can have on Luna County government services and mitigate any potential impacts.

2. **Background:** The Tribe had 30 (+/-) acres of land taken into trust in Luna County, just northwest of Exit 102 on I-10 in June 2002. That land was officially designated the Reservation of the Tribe in November 2011. The Tribe desires to develop a tribal gaming/entertainment facility its Reservation land in Luna County. The Tribe is also preparing its application for a two-part determination pursuant to section of the Indian Gaming Regulatory Act (IGRA) that would require the approval of the Secretary of the Interior and concurrence of the Governor of the State of New Mexico.

3. **Proposed Project.** The proposed project will include the following:

**A.** Phase I Travel Plaza

- Construction of a new 9,442-square-foot facility, which will comply with federal, state, and local construction standards that will house a convenience store, restaurant and facilities for travelers and truckers. The truck stop attached to our existing 5,856 sq. ft. facility.
- A minimum of 45 paved parking spaces for customer parking; Over 50 RV/Truck parking spaces; at least 40 additional spaces for support staff and overflow.
- Gasoline and diesel fueling stations and recharging stations for electric cars.
- Employment of between 12 to 15 local and tribal government employees.

- Tribe will continue to sell cigarettes and alcohol in compliance with Tribal/State compacts.
- The project will include an enhancement of the existing cultural center.
- The project will include use of the existing on-site well water and construction of a new wastewater treatment facility.
- The project will purchase both gas and electric from local utilities and maintain on-site backup generators when applicable.

**B. Phase II Tribal Gaming Facility**

- Conversion of the Tribe's existing 5,856-square-foot facility into a tribal gaming facility.
- The gaming facility will house approximately 80 to 100 slots machine style games; no table games are planned at this time; one full-service restaurant with 20-30 seats; and administrative offices.
- The gaming facility and other tribal governmental offices will employ between 20-40 casino and tribal governmental employees

4. **Section 20 Two-Part Application and Environmental Assessment.** The Tribe is in the process of completing both the Two-Part Application and accompanying National Environmental Policy Act (NEPA) Environmental Assessment (EA). As part of that process, the Tribe will be analyzing the socio-economic and environmental impacts the proposed project will have on the local and region economy, along with the impacts on human health and the environment. Luna County will receive a request for comments from the U.S. Bureau of Indian Affairs (BIA) on the Tribe's Two-Part request. The Tribe is forwarding letters to various federal, state, and local agencies as part of its compliance with NEPA and drafting of the EA. The Tribe has met with some of these agencies directly and will continue to meet with and consult with those agencies on the development of the proposed project.

5. **Negotiation of Cooperative/Services Agreement.** The Parties agree that prior to the opening of the proposed project, it would be in the best interest of both entities to have a completed Cooperative/Services Agreement that addresses such potential areas as police, fire, and emergency services; planning, inspections, and consultations; and payment, reimbursement and joint grant and funding proposals. Because the proposed project is still in the planning and assessment stage, entering a specific agreement at this time is not feasible, however, once approvals have been granted and the development of the project has begun, both Parties agree to enter negotiations on a final agreement(s). Any state, county or municipal agency having and maintaining peace officers may enter into mutual aid agreements with any public agency as defined in the Mutual Aid Act, with respect to law enforcement, provided any such agreement shall be approved by the agency involved and the governor. NM Stat § 29-8-3 (2018).

6. **Term and Termination.** The term of this Letter Agreement shall commence on the date of acceptance by the Tribe and Luna County as evidenced by the signing of this Letter Agreement and shall remain in effect for a period of one (1) year or for a longer period if mutually agreed upon by the parties in writing (the "Term"), unless earlier terminated or extended as follows:

A. This Letter Agreement may be terminated by written notice by either party, or the Term hereof extended, at any time by written notice and agreement of the parties.

B. This Letter Agreement shall terminate at such time as a Cooperative/Services Agreement between the parties as contemplated in Paragraph 5 hereof expressly superseding this Letter Agreement becomes effective.

C. Upon termination of this Letter Agreement either upon the expiration of the Term or earlier pursuant to this Paragraph 6 the rights and obligations of the parties shall be immediately terminated.

7. **Representations, Warranties and Covenants of the Tribe.** The Tribe represents warrants and covenants as follows:

A. The Fort Sill Apache Tribe is a Federally recognized Native American Tribe with a 30-Acre Reservation located at Akela Flats in Luna County, New Mexico. The Tribe is governed by its Tribal Constitution that sets out certain power and authority between the General Council; the Tribal Business Committee; and Chairperson of the Tribe. Pursuant to the Tribal Constitution the Business Committee through the signature of the Tribal Chairwoman has the authority to enter this Letter Agreement on behalf of the Tribe.<sup>1</sup>

B. This Letter Agreement does not violate or conflict with any charter, constitution, rule, precept or order of the Tribe, or any agreement, letter of understanding or letter of intent that the Tribe may have entered with any other party.

8. **Representations, Warranties and Covenants of Luna County.** Luna County represents warrants and covenants as follows:

Each person executing this Letter Agreement represents that he or she has the authority to do so on behalf of Luna County, New Mexico. This Letter Agreement does not violate or conflict with any charter, constitution, rule, precept or order of Luna County, or any agreement, letter of understanding or letter of intent that the Luna County may have entered with any other party

9. **No Oral Modification.** This Letter Agreement may not be modified or amended orally, although by agreement, the parties may work on additional issues and questions outside the scope of this agreement.

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<sup>1</sup> A. ([www.narf.org/nill/constitutions/fort\\_sill/index.html](http://www.narf.org/nill/constitutions/fort_sill/index.html))

10. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person or by overnight courier service to the respective parties as follows:

***If to Fort Sill Apache Tribe:  
Chairwoman Lori Gooday Ware  
Fort Sill Apache Tribe  
43187 U. S. Highway 281  
Apache, OK 73006  
580/588-2298 (Office)  
580/588-3133 (Fax)***

***Copy to:  
Valerie Devol  
Fort Sill Apache Tribe  
Legal General Counsel  
15205 Traditions Lake Parkway  
Edmond, OK 73013  
405 225-2300 (Office)  
405 225-2301 (Fax)***

***Copy to:  
If to the Luna County:***

***Copy to:***

*Either party may designate a different person or entity or place to or at which such notices shall be given by delivering a written notice to that effect to the other party, which notice shall be effective after the same is received by the other party.*

11. **Entire Agreement.** This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, however, the parties are free to address any other issues not referenced in this agreement.



*Agreed and Accepted:*

FORT SILL APACHE TRIBE:

By: \_\_\_\_\_  
Name:

*Title: Chairperson, Fort Sill Apache Tribe*

*Agreed and Accepted:*

LUNA COUNTY, NEW MEXICO:

By: \_\_\_\_\_  
Name:

*Title: County Manager*





# Deming Luna County Commission on Aging



*"People Making A Difference"*

Julie Bolton  
Executive Director

800 S. Granite Street  
Deming, New Mexico 88030

Telephone: (575) 546-8823  
Fax: (575) 546-4076

September 14, 2022

Luna County Commissioners &  
Mr. Chris Brice, County Manager  
County Court House  
700 South Silver Ave  
Deming, New Mexico

Subject: Luna County Board Appointed Member for the Deming Luna County  
Commission on Aging (COA)

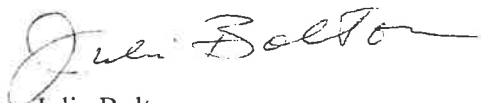
Mr. Brice:

Mrs. Debra French previously served two term as a County appointed Board member for the Deming Luna County Commission on Aging. Mrs. French has been an asset to the COA and has agreed to rejoin our Board for another three-year term. It is the COA Board's recommendation to the County as approval of Mrs. Reedy for a second term. We are seeking your approval on this request.

If any further information is needed please do not hesitate to contact me.

Sincerely,

  
Jennifer Roach  
Chairman, Board of Directors  
Deming Luna County Commission on Aging

  
Julie Bolton  
Executive Director  
Deming Luna County Commission on Aging

Programs:

Senior Companion Program  
Foster Grandparent Program  
RSVP-Retired Senior Volunteer Program

Services:

Adult Day Care  
Respite Care  
Congregate Meals  
Transportation  
Personal/Home Care  
Home Delivered Meals

August 19, 2022

Dear Mrs. Bolton,

**My** name is Debra French and I was contacted by Commissioner Reedy about serving on The Deming Luna County Commission on Aging Board. **I am** writing to express my interest in serving in this capacity. Thank you for **your consideration in this matter.**

Sincerely,

Debra French

# ORDINANCE 76, First Revised

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY:

1.1 This Ordinance shall be known and be cited as the Luna County Tax Obligation for Land Transfers, Divisions and/or Recombinations.

2.1 The Luna County Assessor is charged with the responsibility of maintaining current records of property tax assessments. The transfer and division of land and recombination of land with Luna County impedes the Assessor's ability to maintain current records of property tax assessments when map code numbers are assigned to parcels prior to the payment of past due and prepaid property taxes. Therefore, it is deemed that any transfer, lot split, recombination, or any other division or combination of land within Luna County will only be made on the Assessor's records through or by the assignment of County Assessor map code identification numbers, after the applicant or developer have first obtained a Certificate of Taxes Paid issued by the Luna County Treasurer's Office establishing that any existing property tax obligations on the land to be divided are currently paid. Upon request for certificate, during the current tax year and when tax rates have not been sent or tax bills mailed, prepayment of taxes shall be based on prior tax year's tax rate and will constitute full payment of the taxes for the year during which the certificate is issued.

3.1 “DIVISION OF LAND”: Division of Land, as defined for purposes of this Ordinance, is real property broken down into one or more smaller parcels. These division of land can be in smaller parcels than defined in the subdivision statutes, rules or regulations, but cannot be developed or improved on unless the subdivision statutes, rules or regulations and building permit code requirements have been met.

3.3 “TRANSFER OF LAND”: Transfer of Land, as defined for purposes of this Ordinance, is any change in or conveyance of the ownership of real property, as recorded in the Clerk’s Office.

4.1 If any of the provisions, or part thereof, of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared severable.

5.1 In order for a “Certificate of Taxes Paid” to be issued, all property taxes due or to become due on the land to be transferred, divided or combined, for the current tax year or any past tax years, must be paid in full to the County Treasurer.

5.3 The Assessor's Office will require a five (5) day processing period prior to the issuance of the Certificate of Taxes Paid in Advance.

APPROVED AND  
**DRAFT**  
BOA  
LUNA

**BOARD OF COUNTY COMMISSIONERS  
LUNA COUNTY, STATE OF NEW MEXICO**

**Berenda McWright,  
County Clerk**

**John S. Sweetser,**  
**Commissioner, District 3**

*Be it remembered that at a Special Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19<sup>th</sup> day of September 2022, the following proceedings were had and entered of record.*

**LUNA COUNTY, NEW MEXICO**

**ORDINANCE 113**

**AN ORDINANCE APPROVING A LOCAL ECONOMIC DEVELOPMENT PROJECT FOR  
CATTLEMEN'S MEAT PROCESSING**

**WHEREAS**, the County of Luna (the "County") acting through its Board of County Commissioners, is a political subdivision duly organized and existing under the laws of the State of New Mexico;

**WHEREAS**, Article IX, Section 14, Subsection D, of the New Mexico Constitution permits counties to use public resources to create new job opportunities in support of new or expanding businesses;

**WHEREAS**, the Local Economic Development Act ("LEDA"), Sections 5-10-1 through 17, NMSA 1978, is the implementing legislation required by the aforementioned Article IX, Section 9;

**WHEREAS**, the County is currently in the process of updating the December, 2012 Luna County Comprehensive Plan, both of which include economic development components and the most recent Local Economic Development Plan was passed on April 10, 2013 by Ordinance No. 86, as required by Section 5-10-6, NMSA 1978;

**WHEREAS**, the County has received and reviewed a request for support from Cattlemen's Processing, LLC, an Arizona corporation authorized to do business in New Mexico, which requests the support of the County in acquiring property, improvements, water rights and to serve as the local government conduit for grant awards and low interest loans from State and Federal agencies, including the New Mexico Clean Water State Revolving Funds, to be used for the operation of a USDA FSIS certified facility in Luna County, New Mexico;

**WHEREAS**, the benefits of the proposed project exceed the potential costs and any risks to County;  
and

**WHEREAS**, copies of all existing documents relevant to the project have been submitted to the County Manager and future documents necessary to complete the project will be developed in conjunction with the County Manager and presented for review by the Board of County Manager and be made available for public inspection.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY:**

1. The Company is a Qualifying Entity as defined in Section 5-10-3K, NMSA 1978;
2. The Company is required to and will provide a substantive contribution to the project as required by Section 5-10-10(B), NMSA 1978 in the form of money paid toward construction, property, expanded tax base and a service and facility for the expansion of the local economy;
3. A proposed Project Participation Agreement that conforms to the requirements of Section 5-10-10(E), NMSA 1978, and Ordinance 86 as well as a lease and other necessary documents will be prepared and executed prior to the provision of any public support;
4. The benefits of the proposed project in Luna County are the potential for "new full-time economic base jobs", as defined Section 5-10-3(I), NMSA 1978, the addition of a new

commercial agricultural business expansion of the tax base by operation of the continuing business and are in excess of the cost of County assistance provided to the Company.

5. A Project Revenue Fund for the project shall be established pursuant to Section 5-10-11, NMSA 1978;
6. The Project Revenue Fund shall be subject to an annual independent audit pursuant to Section 5-10-11, NMSA 1978;
7. The County and the Company will enter into a Project Participation Agreement, pursuant to Section 5-10-15B, NMSA 1978, a triple-net lease with option to purchase and applications for grants, loans and other awards from State and Federal agencies;
8. The public support awarded is in exchange for a substantive contribution from the Company as determined by Luna County pursuant to Section 5-10-15D, NMSA 1978,
9. The County, if necessary, will enter into an Intergovernmental Agreement;
10. The Company has provided adequate security as required by Section 5-15-15E, NMSA;
11. Termination of the Project shall be by ordinance pursuant to Section 5-10-12, NMSA 1978, subject to the rights of the parties under this Ordinance.
12. This Ordinance is necessary for the public peace, health and safety and shall take effect when recorded and authenticated by the County Clerk, pursuant to Section 4-37-9 NMSA 1978.

**BE IT FURTHER ORDAINED**, that the County Manager, or his designee, is hereby authorized and directed to do all things necessary to implement this ordinance, including negotiation and execution of an appropriate Project Participation Agreement, as required by law and in substantially the same form as executed by Luna County and the Company and are incorporated herein by reference, the creation of a separate Project Revenue Fund, subject to an annual independent audit.

**APPROVED AND ADOPTED THIS 19TH DAY OF SEPTEMBER, 2022.**

**BOARD OF COUNTY COMMISSIONERS  
LUNA COUNTY, STATE OF NEW MEXICO**

**ATTEST:**

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**Linda M. Smrkovsky, Chair  
Commissioner, District 2**

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**Berenda McWright,  
County Clerk**

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**Barbara L. Reedy,  
Commissioner, District 1**

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**John S. Sweetser,  
Commissioner, District 3**





## COUNTY OF LUNA

Planning Department

700 S. Silver Ave.

PO DRAWER 551 DEMING NEW MEXICO 88031-0551

(575) 543-6620 FAX (575) 544-3455

**Date: September 19<sup>th</sup>, 2022**

**To: Luna County Board of County Commissioners**

**From: Planning Department**

**Subject: Variance Request**

**Background:**

Luna County is requesting a variance from Ordinance 56; Subdivision Regulations, and from having to file a Claim of Exemption.

This variance is necessary to facilitate Luna County's purchase of multiple properties for the Berm Project in Columbus. The project is being developed over multiple phases and several years. Typically, when an owner wants to sell a portion from a parcel of land they own, the owner must go through the subdivision platting process or qualify for one of the Exemptions listed in the Ordinance. Luna County is requesting this variance on behalf of all owners who will be selling or transferring property to Luna County for the benefit of the citizens of Luna County. The Board of County Commissioners is the approving authority for subdivision plats as well as the beneficiary and instigator of the divisions of land. The Board of County Commissioners has already authorized and/or approved many of the pending acquisitions; thereby expressing approval of the transactions. Requiring either the property owners or the Luna County Planning Department to go through the subdivision platting or exemption process would be redundant and add additional cost and delay to the project, which is being funded by Luna County and various agencies of the State of New Mexico. Requiring the filing of a Claim of Exemption could also unnecessarily prevent both current property owners and Luna County from developing the properties being protected by the Berm Project for a period of 5-years, potentially impeding completion of future phases of the project and the economic development of the protected properties upon completion of the project. Requests for final approval

from the Board of County Commissioners will include surveys for each parcel being acquired by Luna County.

\*The Board of County Commission shall have final authority to approve, approve with conditions or deny said variance.

**Staff Finding of Fact**

1. Luna County, as the Applicant has provided supplemental documentation, including Ordinance 56: Subdivision Regulations and a map of the properties currently being acquired.

**Staff Recommendation:** Based on the forgoing, staff recommends approval of this variance request.

**Done at Deming, New Mexico this 19<sup>th</sup> day of August 2022.**

**LUNA COUNTY BOARD OF COMMISSIONERS**

**ATTEST:**

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**Linda M. Smrkovsky, Chairperson  
Commissioner, District 2**

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**Berenda McWright, County Clerk**

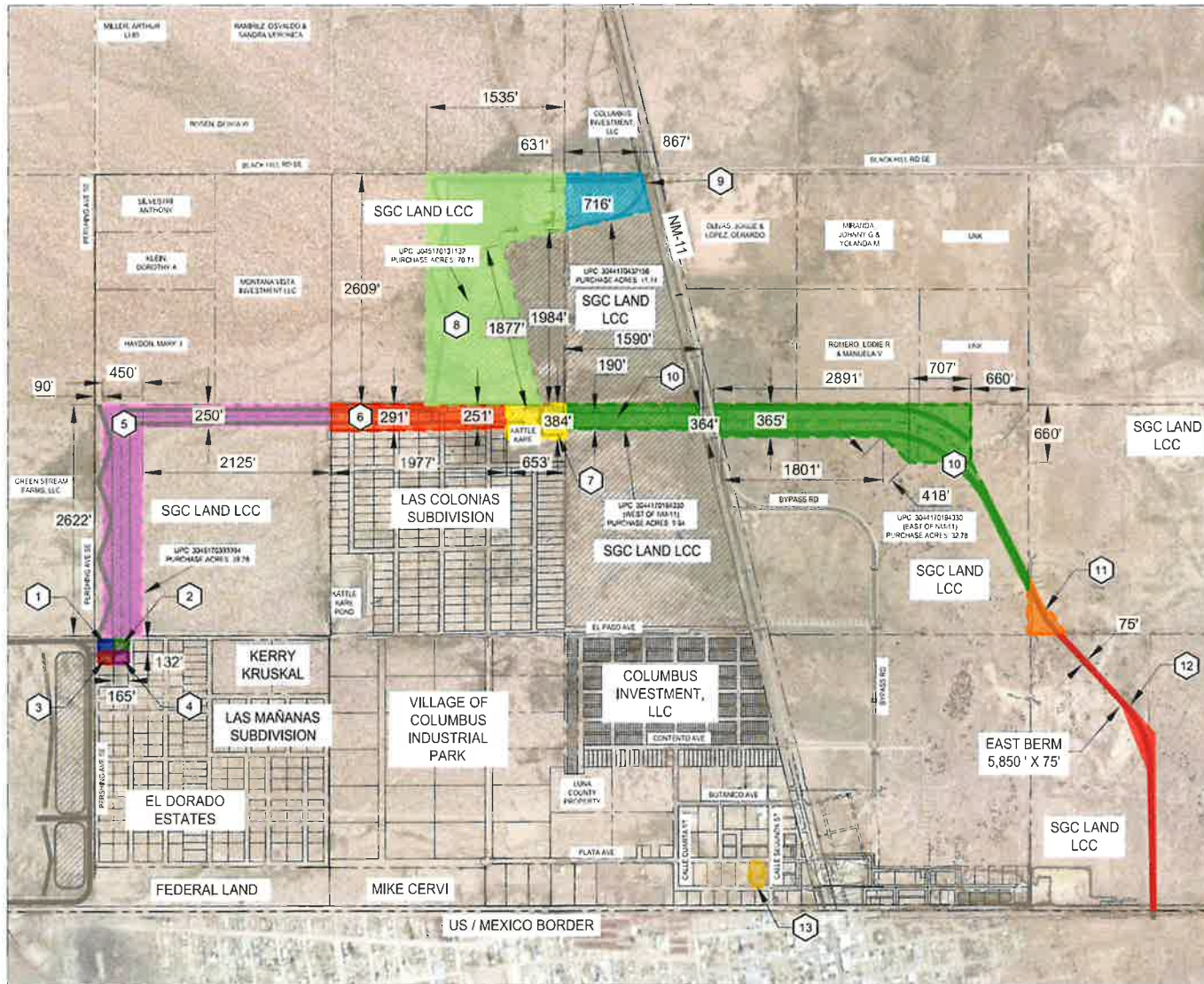
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**Barbara L. Reedy,  
Commissioner, District 1**

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**John S. Sweetser,  
Commissioner, District 3**

# COLUMBUS FLOOD CONTROL PROJECT - RIGHT OF WAY ACQUISITION MAP (9/7/2022)



## LEGEND

- |    |  |  |
|----|--|--|
| 1  |  | APPRAISAL DATE: 07/15/2022<br>OWNER: VALENTINE FAMILY TRUST<br>UPC: 3045171512009<br>ACRES: 0.50 ACRES<br>INDICATED VALUE: \$9,000 (\$18,000 / ACRE)   |
| 2  |  | APPRAISAL DATE: 07/15/2022<br>OWNER: VALENTINE FAMILY TRUST<br>UPC: 3045171460009<br>ACRES: 0.50 ACRES<br>INDICATED VALUE: \$9,000 (\$18,000 / ACRE)   |
| 3  |  | APPRAISAL DATE: 07/15/2022<br>OWNER: VALENTINE FAMILY TRUST<br>UPC: 3045171512022<br>AREA: 0.50 ACRES<br>INDICATED VALUE: \$9,000 (\$18,000 / ACRE)  |
| 4  |  | APPRAISAL DATE: 07/15/2022<br>OWNER: FREIBURGER, LILLIAN D<br>UPC: 3045171460022<br>OWNER: 0.50 ACRES<br>INDICATED VALUE: \$9,000 (\$18,000 / ACRE)  |
| 5  |  | APPRAISAL DATE: 01/06/2022<br>OWNER: SGC LAND LCC<br>UPC: 3045170303334<br>TOTAL AREA: 39.25 ACRES<br>INDICATED VALUE: \$54,950 (\$500 / ACRE)   |
| 6  |  | APPRAISAL DATE: 07/15/2022<br>OWNER: LAS COLONIAS SUBDIVISION, LOS SOCIOS<br>UPC: 3045170130006<br>AREA: 12.62 ACRES (22 LOTS)<br>INDICATED VALUE: \$6,333 (\$500 / ACRE)  |
| 7  |  | APPRAISAL DATE: 07/15/2022<br>OWNER: KATTLE KARE INC<br>UPC: 3045170032297<br>AREA: 3.73 ACRES<br>INDICATED VALUE: \$3,724.50 (\$500 / ACRE)   |
| 8  |  | APPRAISAL DATE: 01/06/2022<br>OWNER: SGC LAND LCC<br>UPC: 3045170131132<br>TOTAL AREA: 70.71 ACRES<br>INDICATED VALUE: \$54,950 (\$500 / ACRE)   |
| 9  |  | APPRAISAL DATE: 08/06/2022<br>OWNER: SGC LAND LCC<br>UPC: 3044170432150<br>TOTAL AREA: 11.14 ACRES (REVISED AREA)<br>INDICATED VALUE: \$11,140 (\$1000 / ACRE)   |
| 10 |  | APPRAISAL DATE: 08/06/2022<br>OWNER: SGC LAND LCC<br>UPC: 3044170194330<br>AREA EAST OF NM-11: 3.94 ACRES<br>AREA EAST OF NM-11: 32.78 ACRES<br>AREA TOTAL: 42.72 ACRES<br>INDICATED VALUE: \$42,720 (\$1000 / ACRE) |
| 11 |  | APPRAISAL DATE: 07/15/2022<br>OWNER: SGC LAND LCC<br>UPC: 3043170262065<br>AREA: 2.92 ACRES (REVISED AREA)<br>INDICATED VALUE: \$1,810 (\$500 / ACRE)  |
| 12 |  | APPRAISAL DATE: 07/15/2022<br>OWNER: SGC LAND LCC<br>UPC: 3043171262155<br>AREA: 7.96 ACRES (REVISED AREA)<br>INDICATED VALUE: \$5,174 (\$500 / ACRE)  |
| 13 |  | APPRAISAL DATE: (PENDING)<br>OWNER: HERMAN ENTERPRISES LLC<br>UPC: 3044171302266<br>AREA: 0.96 ACRES<br>INDICATED VALUE: (PENDING)   |

TOTAL PROPOSED PROPERTY ACQUISITION AREA: 196.24 ACRES



## **COUNTY OF LUNA**

**Planning Department**  
700 S. Silver Ave.  
PO DRAWER 551 DEMING NEW MEXICO 88031-0551  
(575) 543-6620 FAX (575) 544-3455

**Date: September 19<sup>th</sup>, 2022**  
**To: Luna County Board of County Commissioners**  
**From: Planning Department**  
**Subject: Variance Request**

**Background:**

The applicant, Andrew Beall is requesting a variance to allow him to live in his RV on his developed property as a permanent home.

Ordinance 77 was amended on December 21, 2007, and Section 3.1.2 continued the prohibition against allowing any Recreational Vehicle (RV) to be occupied as a permanent residence. Section 3.1.1 is a grandfather clause which excluded any RV located on a site with on-site utilities, including water, sewer and electricity prior to January 21, 2007 from the Ordinance. Mr. Beall purchased property on October 11<sup>th</sup> 2007 and states that he began living in his RV on that property since around that date. A complaint was received in the Planning Department regarding Mr. Beall's use of his RV as a permanent residence. A criminal case was ultimately filed in the Luna County Magistrate Court in August, 2022 and prosecuted by the Sixth Judicial District Attorney's Office. An out of court resolution was reached wherein Mr. Beall would request this variance and if granted, the case would be dismissed.

\*The Board of County Commission shall have final authority to approve, approve with conditions or deny said variance request.

**Staff Finding of Fact**

1. Mr. Beall missed the exemption date by mere months but has maintained on-site utilities and keeps his residence and property in a clean and orderly state, as evidenced by the fact that the only complaint regarding his property was filed in

August, 2022, almost 14 years after the effective date of the restriction he has been charged with violating.

**Staff Recommendation:** Planning Department Staff and the County Attorney recommends that Mr. Beall's request for variance to allow him, and only him, to continue residing in his RV on this property be approved, provided he continues to maintain the on-site utilities and the current upkeep of the property. The variance would not apply to any subsequent owners or occupants of the RV or property and to ensure this, the Variance should be recorded in the property records of the Luna County Clerk.

**Done at Deming, New Mexico this 19<sup>th</sup> day of September 2022.**

**LUNA COUNTY BOARD OF COMMISSIONERS**

**ATTEST:**

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**Linda M. Smrkovsky, Chairperson  
Commissioner, District 2**

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**Berenda McWright, County Clerk**

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**Barbara L. Reedy  
Commissioner, District 1**

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**John S. Sweetser,  
Commissioner, District 3**



# LUNA COUNTY APPLICATION FOR VARIANCE

## INSTRUCTIONS

Print or type clearly. Use additional sheets if necessary. **All required attachments shall be submitted with this application form.** Incomplete or inaccurate applications may delay review and final action. The completed application package must be submitted to the County Planner by the applicant or a designated agent and shall be in compliance with the requirements of the Luna County Ordinance # 75. **Each application must be accompanied by the required administrative fee.**

## APPLICANT INFORMATION

1. Name: Andrew Beall
- Address: 4210 Tamarack Rd. SE.  
Street Address or P.O. Box
- Deming NM 88030  
City State Zip Code
- Telephone Numbers (s): 575-619-0083
- Signature: Andrew Beall Date: 8/21/22

## PROPERTY LOCATION

2. Legal Description: Lots 9, 10, 35+36 Block 10, Unit 83 Deming Ranchettes
3. Reason for Variance (brief Description): Allow motor homes as a continuous and permanently occupied residence, as agreed by county attorney Chuck Credit, and to be grandfathered in.

## PROCEDURAL INFORMATION (to be completed by County Planning Director)

4. Date application received by County Planner: 8.23.22
5. Date variance approved: \_\_\_\_\_ Signed: \_\_\_\_\_

**LUNA COUNTY MANUFACTURED HOME TRANSPORTATION &  
INSTALLATION and RECREATIONAL VEHICLE STANDARDS  
ORDINANCE NUMBER 77**

AN ORDINANCE TO PROVIDE FOR THE TRANSPORTING AND INSTALLING OF MANUFACTURED HOMES, AND FOR THE ESTABLISHMENT OF RECREATIONAL VEHICLE STANDARDS AND FOR THE PROVISION OF PENALTIES, CIVIL REMEDIES, SEVERABILITY AND EFFECTIVE DATE.

**Whereas**, the Luna County Board of County Commissioners deems it necessary and desirable to prescribe standards to maintain orderly development of the County and to provide for the health, safety and well-being of our citizens, maintain property values and the property tax base in Luna County, and to minimize unsightly and unsafe development; and

**Whereas**, Section 4-37-1 NMSA 1978 provides all counties are granted the same powers as municipalities, and included in this grant of powers are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of Luna County and its inhabitants;

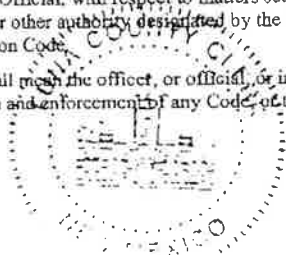
**NOW, THEREFORE BE IT ORDAINED BY THE LUNA COUNTY BOARD OF COUNTY COMMISSIONERS AS FOLLOWS:**

**ARTICLE I      GENERAL PROVISIONS**

- 1.1 **SHORT TITLE:** This Ordinance shall be known as the "Manufactured Home Ordinance", and shall be referred to herein as "this Ordinance".
- 1.2 **JURISDICTION:** This Ordinance shall provide for the regulation of all manufactured homes and Recreational Vehicles, within the County, but not within the boundaries of municipalities.
- 1.3 **INTERPRETATION AND CONFLICT:** The regulations provided herein are held to be the minimum standards necessary to carry out the purposes of this Ordinance. This Ordinance is not intended to interfere with, or abrogate or annul any other valid ordinance or statute. In the event the provisions of this Ordinance conflict with other County rules, regulations or ordinances pertaining to the subject matter herein, the provisions of this Ordinance shall prevail.
- 1.4 **MEANING OF TERMS:** Wherever the terms "Luna County Planning & Community Development Department Director", "County Planning Director", "Luna County Planner", or "County Planner" appear in this Ordinance they shall be read and understood as including any other person or position authorized by the Luna County Planner, the County Manager or the County Commission to administer or otherwise carryout the requirements of this Ordinance.
- 1.5 **PURPOSE:** The purpose of this Ordinance is to promote the general welfare of the people of Luna County through the adoption of minimum standards to protect the essential conditions of health and safety for the purchasers and users of manufactured homes, and the locating and use of Recreational Vehicles.
- 1.6 **DEFINITIONS:**

"Acceptable" shall mean: a) accepted by the Luna County Building Official, the Luna County Code Compliance Officer, the Luna County Planning & Community Development Department Director or New Mexico State Building Official, with respect to matters set out in this Ordinance; b) accepted by the Luna County Fire Marshal, or other authority designated by the County Manager with respect to matters under the NFPA Fire Protection Code.

"Building Official" shall mean the official, or official, or inspector or other designated authority charged with the administration and enforcement of any Code, of the building official's duly authorized representative.



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"Certificate of Compliance" shall mean a certificate issued to the property owner by the Luna County Code Compliance Officer or other designated County official, or a New Mexico State Building Official evidencing the fact that the requirements of this ordinance as set forth in this Ordinance have been met.

"Code" shall mean a standard that is an extensive compilation of provisions covering broad subject matter or that is suitable for adoption into law, any adopted uniform code pertaining to construction activities.

"Code Compliance Officer" shall mean the person designated by Luna County to enforce various County codes or ordinances.

"County" shall mean Luna County, New Mexico.

"County Commission" shall mean the Board of County Commissioners of Luna County.

"Inspector" shall mean the Luna County Building Inspector or the Code Compliance Officer or a person duly delegated by the Luna County Building Inspector or the Code Compliance Officer, or a person instructed or requested by the Luna County Building Inspector or the Code Compliance Officer to provide a written report with respect to any matter set out in this Ordinance.

"LCBO" shall mean the Luna County Building Official; see also Inspector and Building Official.

"Maintained" shall mean to carry out any repairs, reconstruction, refinishing, or replacement of any part or parts of a building or structure or property, and maintained shall also mean the grooming of yards.

"Manufactured Home" shall mean a movable or portable housing structure over 32 feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or maybe two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. "Manufactured Home" does not include recreational vehicles or modular or pre-manufactured homes built to IBC standards, designed to be permanently affixed to real property. "Manufactured Home" includes any movable or portable housing structure over twelve feet in width and forty feet in length, which is used for non-residential purposes.

"Mobile Home" shall mean a moveable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or the International Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code.

"Occupancy" shall mean the purpose that a building, or part thereof, is used or intended to be used.

"Officer" shall mean the Code Compliance Officer of Luna County, the person designated by Luna County to administer and enforce various codes and ordinances.

"Owner" shall mean any person, agent, firm or corporation having a legal or equitable interest in the property.

"Parcel" shall mean a unit of land capable of being described by location and boundaries and not dedicated for public or common use.

"Permit" shall mean an official document or certificate issued by the building official, the County Planner, or other authorized authority, as appropriate, authorizing performance of a specified activity.

"Person" shall mean a natural person including any individual, partnership, company, corporation, firm, association, trust, estate, foundation, state and federal agency, institution, county, city, town, village, or municipality or other legal entity, however organized.

"Property" shall mean any area, plot, or parcel of land in Luna County, which is under a common ownership or is separately identified for assessment by the Luna County Assessor's Office. Property shall include land under the ownership of the United States, the State of New Mexico, or any local government or school district entity. This definition is intended to be inclusive and not limiting, and shall therefore include all land within the boundaries of Luna County, New Mexico, except that the definition of property,

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and therefore this Ordinance, shall exclude property within the boundaries of the City of Deming and the Village of Columbus, and any hereafter incorporated municipality.

"Property Occupant" shall mean any person who is occupying any property, whether by legal right or without legal right.

"Property Owner" shall mean the person who is the recorded owner of any property according to the records contained in the Luna County Clerk's Office.

"Recreational Vehicle" shall mean a self contained driven or towed portable unit not designed to be installed on a temporary or permanent foundation nor used for human occupancy as a permanent residence which includes: pickup campers, chassis mounted motor homes, mini motor homes, park trailers, recreational vans, pop-up tent/hard-top trailers, converted buses, camping trailers, fifth wheel trailers or other vehicles that are constructed to include a chassis, integral wheels and a towing hitch and are primarily designed or constructed to provide temporary, readily moveable living quarters for recreation, camping or travel uses.

"Sewage" shall mean residential liquid wastes, commercial liquid wastes, industrial liquid wastes, and any drainage, but does not include storm water.

"Sewerage System" shall mean a system for transporting sewage owned and operated by Luna County, a municipality, or a private disposal system approved by the state of New Mexico Environmental Department.

"Shall" shall be construed as mandatory.

"Site" shall mean a parcel of land or several contiguous parcels of land used or occupied, or to be used or occupied, by a building and accessory buildings and the area belonging to such buildings, bounded by a property line or a designated portion of a public street.

"Street or Road" shall mean all property dedicated or intended for public or private access to property, or subject to public easements therefore.

"Structure" shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. Without limiting the generality of the foregoing, structure shall include a wall, fence, sign or billboard.

"Towing Service" shall mean the use of specialized equipment, including repossession services using towing equipment, to transport and locate a manufactured/mobile home.

"Use" shall mean the use for which land or buildings are occupied or maintained, arranged, designed, or intended.

Words not Defined: Any word or term not defined in this Ordinance shall have the meaning ascribed to it in the Luna County Subdivision ordinance or the Luna County Zoning ordinance or the Deming/Luna County Extra-Territorial Zoning regulations, or they shall have their ordinary accepted meaning within the context with which they are used.

## ARTICLE 2 MANUFACTURED HOME (SINGLE-WIDE AND MULTI-SECTION)

### 2.1 ADOPTION OF CODES

Each and all of the regulations, provisions, penalties, conditions, terms and all appendices of the latest editions of:

- 2.1.1 New Mexico Manufactured Housing Division Rules and Regulations
- 2.1.2 NFIP Regulations, 44CFR, Section 60.3; Flood Insurance Study; and Flood Insurance Rate Map, effective October 19, 2010.
- 2.1.3 National Manufactured Housing Construction and Safety Standards Act of 1974

are hereby referred to, adopted and incorporated as fully as if set out verbatim herein and any amendments thereto, including the latest editions thereof.

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## 2.2 COPIES OF CODES AVAILABLE FOR INSPECTION

One or more copies of applicable codes adopted in Article 2.1 of this Ordinance shall be available and subject to inspection during regular business hours in the Luna County Planning & Community Development Department

## 2.3 FEE SCHEDULE

The Fee Schedule for a Manufactured Home Transportation & Installation Permit (MHTIP) shall be established by the Luna County Board of County Commissioners. No permit shall be issued nor shall an application be considered complete prior to the receipt of said fee.

## 2.4 ON SITE UTILITY AND DEVELOPMENT REQUIREMENTS

All manufactured homes whether titled or untitled are subject to this Ordinance and shall, prior to occupancy, be inspected by an authorized official, and issued a Certificate of Compliance. Approved on-site utilities, to include water, sewer, and electricity are prerequisite to issuance of a Manufactured Home Transportation & Installation Permit (MHTIP). All housing units shall be connected to a waste disposal system permitted and approved by the New Mexico Environment Department except privies, a domestic water well permitted by the New Mexico State Engineer, or be connected to an approved potable water utility whether private or municipal. For purposes of this section:

- 2.4.1 There shall be no multiple users connected to a domestic water well nor to any on site liquid waste disposal system except for properly permitted community water systems and properly permitted community wastewater systems, or as otherwise provided herein.
- 2.4.2 All electrical, plumbing, and gas hookups shall be inspected and approved by an inspector of the Manufactured Housing Division or CID, as the case may be prior to occupancy and before a Certificate of Occupancy or Certificate of Compliance will be issued by the Code Compliance Officer, LCBO or the Luna County Planning & Community Development Department Director.
- 2.4.3 Any water/well, sewer/scptic, electric, or natural gas/LP utility provider that connects service to individual parcels before the land owner holds a valid MHTIP is in violation of this ordinance and the service shall be disconnected.
- 2.4.4 No Manufactured Home Transportation & Installation and Permit (MHTIP) shall be issued until and unless the applicant for such permit can show that he/she/it/they have legal access to a lot or parcel of land either by means of a public road or by means of a properly recorded easement, and such access shall provide reasonable physical ingress and egress to and from the parcel of land.

## 2.5 FLOOD HAZARD INSTALLATION REQUIREMENTS

The Luna County Floodplain Manager is hereby appointed the Floodplain Administrator to administer and implement the Flood Hazard Installation provisions of this Ordinance and other appropriate sections of 44 CFR pertaining to floodplain management. No Manufactured or Mobile Home shall be located or installed in a flood-prone area, such as a Flood Hazard Area as designated by the National Flood Insurance Rate Map for Luna County, or in, on, or over the path of an arroyo, or floodway without the prior approval of the County Floodplain Manager and the issuance of a floodplain development permit. All development and all construction related to such development shall comply with the minimum standards as adopted by, or may be amended by, the Federal Emergency Management Agency (FEMA). A new or replacement water supply system or sanitary sewage system may be required within a designated flood hazard area which shall be designed to minimize or eliminate infiltration of flood waters into the system as well as discharges from the system into flood waters, and the on-site waste disposal system must be located so as to avoid impairment of them or contamination from them during flooding.

### 2.5.1 Flood Hazard Installation Base Flood Elevation

All Manufactured Homes being located or installed in a special flood hazard area shall be anchored to a permanent foundation system and installed such that all electrical, heating, ventilation, plumbing and other service facilities are located so as to prevent water from entering or accumulating within the components during conditions of flooding and must meet the following conditions:

The Manufactured Home chassis shall be supported by reinforced piers or other foundation elements of at least twenty-four (24) inches in height above grade and be securely anchored to a

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permanent foundation system to resist flotation, collapse and lateral movement in areas where no base flood elevations are determined.

## 2.6 AGE AND LOCATION OF MANUFACTURED HOMES

New and used or refurbished manufactured homes manufactured after the effective date of the National Manufactured Housing Construction Standards Act of 1974, 42 U.S.C. 5401, et seq. ("The Act") may be installed anywhere in the County. No manufactured home or mobile home manufactured prior to the effective date of the National Manufactured Housing Construction Standards Act of 1974, shall be transported into, or installed upon any site in Luna County. No person shall transport or move into, or install upon any site in Luna County any manufactured home or mobile home that does not have affixed to it a U.S. Department of Housing and Urban Development Label of Certification, or other sufficient proof of the date of manufacture.

This Article is subject to any applicable private, restrictive covenants pertaining to subdivision lots or real property. For purposes of this Article it is the sole responsibility of those persons proposing to locate manufactured homes outside of existing mobile home parks or any manufactured home park to ensure that manufactured homes are allowed in the subdivision or area where they intend to locate their manufactured home. Luna County does not enforce restrictive covenants. Existing mobile home parks are defined as those parks legally established and in existence on the effective date of this Ordinance.

## 2.7 MANUFACTURED HOME TRANSPORTATION & INSTALLATION PERMIT REQUIRED

After the effective date of this ordinance, the owner of any manufactured home, titled or untitled, with the sole intention of installing said manufactured home to be used for residential purposes, shall obtain a Manufactured Home Transportation & Installation Permit (MHTIP) from the Luna County Planning & Community Development Department prior to installation of the home. This section shall also apply to such units which are specifically manufactured for commercial purposes, are manufactured to meet National Manufactured Housing Construction and Safety Standards, but do not meet the requirements of the International Building Code. If the Luna County Code Compliance Officer, County Planner or LCBO determines that the property for which a permit has been requested is in violation, has outstanding violations, or may be in non-compliance with any part of this ordinance, or the Luna County Subdivision Ordinance, or any applicable state or federal regulation, the Luna County Planner may deny issuance of the permit until such time as the property has been deemed compliant.

## 2.8 MANUFACTURED HOME TRANSPORTING OR MOVING

It shall be unlawful for any person or moving company to transport a manufactured home, from any location within Luna County, or from any location outside Luna County, to any site in Luna County, without first receiving from the owner of the manufactured home a copy of an approved Manufactured Home Transportation & Installation Permit (MHTIP) issued by the Luna County Planning & Community Development Department. Any home to be transported into the County shall comply with the provisions of Article 2.9 of this Ordinance. This Article 2.8 does not prevent the moving of a manufactured home from a site within Luna County to a site outside of Luna County.

## 2.9 MANUFACTURED HOME/MOBILE HOME PRE-OWNED UNITS

Any manufactured home/mobile home offered for resale and which is intended to be installed in Luna County, must be habitable as defined in this regulation prior to occupancy and issuance of a Certificate of Compliance. Structural repairs, alterations and modifications to a manufactured home are regulated by the New Mexico Manufactured Housing Division. It shall be the responsibility of the seller or purchaser to obtain the required permits from said agency, upon inspection and approval by the State Manufactured Housing Inspector, and compliance with this ordinance, a Certificate of Compliance shall be issued prior to occupancy.

## 2.10 MANUFACTURED HOME/MOBILE HOME EXEMPTIONS

Manufactured homes/mobile homes which were legally established in manufactured/mobile home parks or other parcels of land prior to December 9, 1999, are exempted from the requirements of this ordinance, and with appropriate documentation shall be legal non-conforming uses until moved from that location.

## 2.11 MANUFACTURED HOME/MOBILE HOME LEGAL NON-CONFORMING

A legal non-conforming manufactured home/mobile home is any manufactured home/mobile home which was legally installed prior to December 9, 1999. This does not, however, constitute an exemption from any laws or

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requirements which were in effect at the time of such installation. Any relocation of such a home will terminate the legal non-conforming status under this section and result in the application of this ordinance.

#### 2.12 MANUFACTURED HOME SITE REQUIREMENTS

The owners of property upon which a manufactured home is to be installed shall provide the Luna County Planning & Community Development Department with a legal description, a plat or survey map clearly and accurately defining the location of the property, and a sketch plan of the proposed orientation and location of the manufactured home thereon, to include the location of the domestic well if not connected to a community water system, the liquid waste disposal system, and the electric service connection. Approved on site utilities are prerequisite to issuance of a Manufactured Home Transportation & Installation Permit (MHTIP).

#### 2.13 MANUFACTURED HOME ANCHORS

All manufactured homes shall be securely anchored to the ground in accordance with the manufacturer's installation instructions. Where manufacturer's installation instructions are not available, the requirements shall be set out in section 49.5.1 of the state of New Mexico Manufactured Housing Rules and regulations, 14 NMAC 12.2, January 1, 2001.

#### 2.14 MANUFACTURED HOME NUMBER PER SITE

Sites shall be limited to not more than one (1) manufactured home on any individual site, lot, tract or parcel of land as recorded in the office of the Luna County Clerk. In the case of site built residences, the temporary installation of a manufactured home may be permitted during construction, where a valid building permit has been issued. Within 30 days after the property owner receives a certificate of occupancy for the site built residence, the manufactured home must be removed from the premises.

#### 2.15 MANUFACTURED HOME/MOBILE HOME SKIRTING

- 2.15.1 All manufactured homes shall be skirted on all sides within thirty (30) days of the date of issue of the manufactured home installation permit by the Luna County Planning & Community Development Department. Material used for skirting shall be in good condition and durable. Material such as vinyl sheeting, aluminum sheeting, painted galvanized steel sheeting, and similar material shall be used. Use of poor quality building materials, and materials such as wood boxes, crates or pallets, used tires and any similar material is prohibited.

#### 2.16 MANUFACTURED HOME CERTIFICATE OF COMPLIANCE

Upon completion and verification of all inspections and requirements of this ordinance and any other applicable ordinance for manufactured homes, a Certificate of Compliance shall be signed by, the Code Compliance Officer, the County Planner or other designee, and a copy shall be provided to the owner/occupant.

#### 2.17 OCCUPANCY COMPLIANCE

All manufactured home units shall not be occupied until and unless the Manufactured Housing Transportation & Installation Permit (MHTIP) has been signed, noting any exceptions and/or conditions, specifying dates for compliance with any noted exceptions, and the Code Compliance Officer, the LCBO or the County Planner has issued a Certificate of Compliance.

#### 2.18 FEE SCHEDULE

The Fee Schedule for Manufactured Home Installation Permits shall be established by the Luna County Board of County Commissioners. No permit shall be issued nor shall an application be considered complete prior to the receipt of said fee.

### ARTICLE 3 RECREATIONAL VEHICLE STANDARDS

#### 3.1. RECREATIONAL VEHICLES GENERAL

- 3.1.1 Any Recreational Vehicle located on a site with on-site utilities, including water, sewer and electricity prior to January 21, 2007, shall be exempt from this ordinance.
- 3.1.2 Recreational Vehicles shall not be occupied as permanent residences. Fully self-contained Recreational Vehicles parked or located, and occupied at a site which is not located in an approved Mobile Home or

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Recreational Vehicle Park, for 30 or more consecutive days must have on-site utility connections as described in Article 2, Section 2.4 of this Ordinance, and shall require a permit issued by the Luna County Planning & Community Development Office. Recreational Vehicles parked or located, and occupied at a site which is not located in an approved Mobile Home or Recreational Vehicle Park, but which does have approved on-site utility connections may be permitted to remain at that site for not more than two hundred forty (240) days within any calendar year. Recreational Vehicles so located and permitted must be fully licensed and ready for highway use. "Ready for highway use" means that it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities with no permanently attached additions. Recreational Vehicles intended for long term residence (more than 240 days residence) must be located in approved Mobile Home or Recreational Vehicle Parks.

3.1.3 Recreational Vehicles may be temporarily permitted on sites where a building permit has been issued for a site built dwelling, or modular home, or where a Manufactured Housing Transportation & Installation Permit (MHTIP) has been issued, for a time period coinciding with the time period of the building permit. If construction has not been completed on the permanent dwelling within the permit time period, the owner may apply for an extension of the permit. The extension will be granted if the owner can satisfactorily demonstrate that progress toward completion of the permanent dwelling is being made.

3.1.4 Anyone who fails to obtain a permit as required under Article 3, Section 3.1, Sub-sections 3.1.2 or 3.1.3 shall be subject to the enforcement procedures and penalties set out in Article 4 of this Ordinance.

#### ARTICLE 4 ADMINISTRATION AND ENFORCEMENT

##### 4.1 CODE COMPLIANCE OFFICER

4.1.1 The Code Compliance Officer and the Luna County Planning & Community Development Department Director shall be responsible for the Administration and Enforcement of this Ordinance and any other Code or Ordinance directed by the appropriate Luna County authority

##### 4.2 INSPECTORS

4.2.1 Any Building Inspector of the Luna County Planning Office, and the Luna County Fire Marshal, and any Electrical Inspector of the State of New Mexico, and any Plumbing Inspector of the State of New Mexico, and any Environmentalist of the State of New Mexico Environment Department, and any Manufactured Housing Division Inspector of the State of New Mexico, and any Engineer or Technician or Technologist or Water Resource Specialist of the State Engineer's Office of the State of New Mexico, and any other qualified person, may be authorized by the Code Compliance Officer to help enforce the standards set out in this Ordinance, or may be requested by the Code Compliance Officer to give a written report, or other advice to aid in the administration and enforcement of this Ordinance.

##### 4.3 NOTICE OF VIOLATION

4.3.1 In addition to the criminal penalties provided for in this Ordinance, any such violation, after reasonable efforts to secure voluntary compliance with this Ordinance have failed, shall be subject to abatement as follows:

- a) Notice of Violation. (i) If, after inspection, as the result of a complaint by a member of the public, or the observation of any County or State employee, the Officer is satisfied that a violation does exist, the Officer shall serve, or cause to be served by personal service, or send by prepaid registered mail to the owner of record of the property, or to the occupant or tenant of the property, or both, and to all persons shown by the records to have an interest in the property, a Notice of Violation setting out the particulars of the violation(s). The Notice shall establish that the abatement of the violation(s) by the owner, or occupant or tenant, or both, shall begin in not more than ten (10) days and shall be completed in not more than ninety (90) days after service of the Notice. The Notice shall be served at the owner's or occupant's or tenant's last known address; (ii) In the event a violation of this ordinance constitutes an immediate danger to the public health and safety, the notice provisions of this subsection shall not apply, and the violation may be prosecuted and abated immediately.
- b) Placard. If the Officer is unable to achieve service under Article 4.3.1 a) he/she may place a placard containing the terms of the Notice in a conspicuous place on the property or building,

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and the placing of the placard shall be deemed to be sufficient service of the Notice on the Owner or other persons.

- c) Extension of Time Frame for Abatement. Where the Officer is satisfied that there is good and sufficient reason to extend the time frame for abatement of the violation(s), he/she may extend the time frame set out in Article 4.3.1 a) above for a period of time not to exceed forty-five (45) days beyond the time period set out in the original Notice.
- d) Failure to Abate. In the event the owner, occupant or tenant of the property where the violation exists, has failed to abate the violation(s) within the prescribed period of time, then the Officer shall issue a citation or file a complaint charging violation of this Ordinance with the Magistrate Court, or other appropriate court of jurisdiction, demanding that the owner of the property, or the occupant, or both, be held to answer to the Court for the violation.
- e) Removal of Violation. In the event that the person is convicted of violating this Ordinance and continues to refuse to abate the violations, the County or aggrieved property owner may enforce this Section in any manner consistent with law.

#### 4.4 PROHIBITION

- 4.4.1 The Code Compliance Officer may issue a Notice prohibiting the occupancy of any unsafe or uninhabitable manufactured/mobile home.

#### 4.5 CITATION UNIFORM NON-TRAFFIC

- 4.5.1 The use of uniform non-traffic citation forms is authorized for use in enforcement of this Ordinance, except as otherwise provided.

#### 4.6 PENALTIES AND REMEDIES

Any person violating or failing, or refusing to comply with the provisions of this Ordinance and the Codes adopted may be prosecuted in any court of competent jurisdiction within the County, and shall be punished by (1) a fine of not more than three hundred dollars (\$300), The Board of County Commissioners may apply to the District Court for appropriate injunctive relief to compel compliance by any person whose conduct violates any provision of this Ordinance. The County shall be entitled to recover a reasonable attorney's fee if required to enforce this Ordinance through the issuance of a demand letter, or in enforcing any portion of this Ordinance in any Court of competent jurisdiction. After the effective date of this ordinance, all violations are subject to issuance of a citation.

#### ARTICLE 5 SEVERABILITY

If any article, section, subsection, paragraph, sentence, clause, phrase, provision, standard or any portion thereof of this Ordinance is, for any reason, held to be unconstitutional, invalid, or void, the remaining portions shall not be affected since it is the express intention of the Luna County Board of County Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase, provision, standard, and every part thereof separately and independently from every other part.

#### ARTICLE 6 EFFECTIVE DATE AND REPEAL

This Ordinance shall be recorded and authorized by the County Clerk following adoption by the Board of County Commissioners. The effective date of this Ordinance shall be thirty (30) days after the Ordinance has been recorded.

Adoption of this Ordinance hereby repeals Luna County Ordinance No. 37, Second Revision.

PASSED, APPROVED AND ADOPTED this 14<sup>th</sup> day of October, 2010.

ATTEST:

Karen Smyer, County Clerk

Board of County Commissioners,  
Luna County, New Mexico.

By: R. Javier Diaz  
R. Javier Diaz, Chairman

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