

# **LUNA COUNTY BOARD OF COUNTY COMMISSIONERS**

**Barbara L. Reedy**  
Member

**Linda M. Smrkovsky**  
Chairperson

**John S. Sweetser**  
Member

**Thursday, October 10, 2019  
10:00 a.m.  
Regular Meeting  
Luna County Courthouse**

1. **Call to Order:** Chair 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. **Minutes:**
  - a. Public Hearing- September 19, 2019  
**MOTION AND VOTE**
  - b. Regular Meeting- September 19, 2019  
**MOTION AND VOTE**
  - c. Special Meeting- September 23, 2019  
**MOTION AND VOTE**
5. **Service Awards:**

a. Mirna Chairez	Parents As Teachers	5 yrs
b. Yolanda Ruiz	Parents As Teachers	5 yrs
c. Lydia Salaiz	Detention Center	20 yrs
d. Sylvia Baeza	Detention Center	20 yrs
6. **Elected Officials Report:**
7. **County Manager's Report:**
  - a. Regular Report
  - b. Restrictive Housing Quarterly Report
8. **Indigent Claims Report:**
  - a. Recess as County Commission, Convene as Claims Board

**MOTION AND VOTE**

- b. Presentation of Claims Report by Joanne Hethcox \$13,465.94-August-Tabled  
\$16,198.34-October
- c. Consider Claims dated October 10, 2019

**MOTION AND VOTE**

- d. Recess as Claims Board, Re-Convene as County Commission

**MOTION AND VOTE**

9. **Public Comment:** The Public has the opportunity to provide comment 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. Comment will not be allowed on individual agenda items as they are discussed by the Commissioners during new business.

10. **Public Hearing:** Ordinance Number 98 Animal Control

11. **Ordinance:** Ordinance Number 98 Animal Control

**MOTION AND VOTE**

12. **Consent Agenda:**

- a. Accounts Payable: \$1,098,032.19
- b. Payroll: \$1,154,785.72
- c. Oath of Office and Appointment for Court Security Garret Gigante

**MOTION AND ROLL CALL VOTE**

13. **New Business:**

- a. Resolution 19-51 Budget Increases  
**MOTION AND ROLL CALL VOTE**
- b. Resolution 19-52 Budget Transfers  
**MOTION AND ROLL CALL VOTE**
- c. Resolution 19-53 NMFA Loan Road Department  
**MOTION AND ROLL CALL VOTE**
- d. Domestic Violence Awareness Month Proclamation  
**MOTION AND ROLL CALL VOTE**

14. **Old Business**

- a. Budget Review Committee Appointment
- b. Discussion on Migrant Shelter

**15. Executive Session:** Executive Session to discuss:

- a. Limited Personnel Matters pursuant to 10-15-1(H)(2) NMSA 1978 pertaining to the County Manager's Evaluation & Contract to include job description, performance goals, roles and responsibilities
- b. Bargaining strategy pursuant to Section 10-15-1(H)(5) NMSA 1978 for collective bargaining sessions with AFSCME Local #2061 (LCDC)
- c. Pertaining to threatened or pending litigation pursuant to Section 10-15-1(H)(7) NMSA 1978 pending litigation matters, pending lawsuit (Ruiz, Thomas and Najera)

**MOTION AND ROLL CALL VOTE**

**16. Upcoming Meetings (unless otherwise specified):**

Rescheduling of November Regular Commission Meeting

Considerations: Staff availability; Animal Ordinance; Publication Requirements

**17. Adjourn:**

**NOTE TO THE PUBLIC:** Please use the microphone when addressing the Board. This is necessary for recording purposes. Thank you for your cooperation. Headphones for hearing enhancement are available upon request.

**MINUTES  
PUBLIC HEARING  
LUNA COUNTY BOARD OF COUNTY COMMISSIONERS  
Thursday, September 19, 2019**

**BE IT REMEMBERED** that the Luna County Board of County Commissioners met at 3:00 p.m. on Thursday, September 19, 2019 in the County Commission Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting a Public Hearing.

**CALL TO ORDER:** Chair Smrkovsky called the meeting to order at 3:12 p.m. and led the Pledge of Allegiance and the salute to the flag of New Mexico.

**ROLL CALL:** Deputy Clerk Pilar Salcido called roll. The following Commissioners constituting a quorum were present:

**Barbara L. Reedy, District 1  
Linda M. Smrkovsky, Chair, District 2  
John S. Sweetser, District 3**

**DISCUSSION:**

- a. **Infrastructure Capital Improvement Plan FY 2021-2025 Review and Discussion:** Priscilla Lucero from SWNM Council of Governments presented the up to date ICIP Plan. The following items were suggested as priorities for the ICIP.

**List for 2021:**

1. Dispatch/IT Center Expansion/Improvement Facility
2. Roads Improvements
3. Entertainment Complex Improvements
4. Health Complex
5. Detention Center Improvements
6. Public Safety County Vehicles
7. Regional Law Enforcement Complex
8. Park Improvements
9. Flood Prevention Projects
10. Luna County Courthouse Improvements
11. Solid waste improvements
12. Mimbres Valley/Special Events Center
13. Comprehensive Plan Update
14. NM 11 Hwy 180 Truck By-pass Route
15. Heavy Road Machinery/Equipment
16. Youth and Community Recreation Complex
17. Child Care Center Renovation



18. Computer Upgrades
19. Healing House

**List for 2022**

1. Hermanas Grade
2. Road Improvement Project
3. Fiber Installation
4. Cattle Guards
5. Asset Management Plan
6. Luna County Affordable Housing Plan

**PUBLIC COMMENT:** Chair Smrkovsky opened the floor to Public Comment. Health Promotion Specialist Rebecca Sanchez and Advance Clerk/Health & Safety Officer Marisela Lobato from the Department of Health provided to the Board a list of building improvements which they would like to have addressed. Deputy County Manager Byron Hollister and County Manager David McSherry assured the individuals that improvements are coming.

**ADJOURN:** Upon motion made by Commissioner Sweetser and a second made by Commissioner Reedy, Chair Smrkovsky adjourned the meeting at 4:17 p.m.

**ATTEST:**

**LUNA COUNTY BOARD OF  
COUNTY COMMISSIONERS**

\_\_\_\_\_  
**Andrea Rodriguez, Luna County Clerk**

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

**Approved:** \_\_\_\_\_

\_\_\_\_\_  
**Chair, Linda M. Smrkovsky, District 2**

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

**MINUTES  
REGULAR MEETING  
LUNA COUNTY BOARD OF COUNTY COMMISSIONERS  
Thursday, September 19, 2019**

**BE IT REMEMBERED** that the Luna County Board of County Commissioners met in regular session at 4:00 p.m. on Thursday, September 19, 2019 in the County Commission Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting any and all business to come properly before the Board.

The following staff and elected officials were present: County Manager David McSherry, Deputy County Manager Byron Hollister, County Attorney Charles C. Kretek, Administrative Assistant Laura Garcia, Chief Deputy Clerk Berenda McWright, Deputy Clerk Pilar Salcido, Assessor Michelle Holguin, Chief Deputy Assessor Isabelle Enciso, Treasurer Gloria Rodriguez, Chief Deputy Treasurer Dora Madrid, Captain Michael Brown, IT Technician Judy Hatch, Administrative Assistant Debra Seats, DWI Coordinator Edith Vasquez, Preventionist Teresa Aguilera, LCDC Director Chris Brice, Executive Assistant Yossie Niebles, Dispatch Director Lauree Sanchez, Dispatch Operations Manager Jovanie Granillo, Road Department Director Marty Miller and Budget & Procurement Director/Indigent Claims Administrator Joanne Hethcox.

**CALL TO ORDER:** Chair Smrkovsky called the meeting to order at 4:29 p.m., and led the Pledge of Allegiance and the salute to the flag of New Mexico.

**ROLL CALL:** Deputy Clerk Pilar Salcido called roll. The following members of the Board constituting a quorum were present:

**Barbara L. Reedy, District 1  
Linda M. Smrkovsky, Chair, District 2  
John S. Sweetser, District 3**

**APPROVAL OF AGENDA:** Chair Smrkovsky requested approval of the agenda with the following changes to include moving the presentation by Taylor Horst after the approval of agenda and moving the service award right after the presentation. Chair Smrkovsky also requested pulling items c and d from the Consent Agenda to be considered under New Business items g and h for discussion. Also, Old Business to be moved in front of New Business. Chair Smrkovsky also questioned item a. under the Executive Session and suggested that become a separate item after the Executive Session. Commissioner Reedy motioned to approve the agenda as amended. Commissioner Sweetser seconded the motion which carried unanimously.

**PRESENTATION:** Taylor Horst, Director of New Mexico County Risk Management gave presentation on Insurance Coverage. Mr. Horst explained that Chair Smrkovsky is on the NM Associations of Counties Board of Directors as the Luna County Representative. Commissioner Sweetser is now on the Multi-Line Insurance Pool Board. Mr. Horst gave two power point presentations which provided an extensive overview of NM Counties services and insurance coverages they provide to Counties.

**SERVICE AWARDS:** Miguel Carreon from the Detention Center was presented his 20 year anniversary pin by Captain Lionel Lozano.

## MINUTES:

- **Work Session – August 8, 2019:** Upon a motion made by Commissioner Reedy and a second by Commissioner Sweetser the Minutes of the August 8, 2019 Work Session were unanimously approved.
- **Regular Meeting – August 8, 2019:** Upon a motion made by Commissioner Sweetser and a second by Commissioner Reedy the Minutes of the August 8, 2019 Regular Meeting were unanimously approved.
- **Special Work Session – August 28, 2019:** Upon a motion made by Commissioner Reedy and a second by Commissioner Sweetser the Minutes of the August 28, 2019 Special Work Session were unanimously approved.
- **Special Meeting – August 28, 2019:** Upon a motion made by Commissioner Sweetser and a second by Commissioner Reedy the Minutes of the August 28, 2019 Special Meeting were unanimously approved.

**ELECTED OFFICIALS REPORTS:** Assessor Michelle Holguin reported they received tax certificates from DFA. She reported they received two sets of tax certificates which is due to the School Bond Elections being held in November. One tax rate reflects tax rates if the School Bond passes and the other tax rates reflect the tax rates if the School Bond does not pass. Ms. Holguin is asking the Board to approve both tax certificates at this time. Ms. Holguin mentioned the Clerk's Office has five days to canvas the election at which time the Assessor's Office will know which tax certificate will be implemented and which tax roll will be turned over. Ms. Holguin also mentioned that the Luna County Assessor's, Clerk's and Treasurer's Offices are now offering online services. The Chamber of Commerce, Luna County website and the Deming Headlight will be used in helping to inform the public of this new service. She also announced that Appraisers Casi Goldman and Alma Arias received their Appraisers Certifications. Mr. Philip Sena the Bureau Chief from Property Tax Division presented the awards to both Casi and Alma and they were recently recognized in the Deming Headlight for their accomplishments. Ms. Holguin also mentioned the Assessor's Office is working towards offering the public an option to receive their Notice of Value by regular mail or email in the future so they are collecting e-mail addresses at this time.

Treasurer Gloria Rodriguez reported they requested an extension on mailing out the tax bills and now have until December 1<sup>st</sup> to do so. The extension for the due dates will now be December 10<sup>th</sup> and delinquent date will be January 11, 2020. She also mentioned information has gone out to the schools, City of Deming, Village of Columbus, mortgage companies and abstract companies letting them know the information received. Ms. Rodriguez also mentioned she needs to publish the new billing and due dates three times in the Deming Headlight.

Captain Michael Brown reported most of the stats for the month of August have gone up significantly. Non-criminal civil activities, assaults and burglaries are up. Larcenies are down, vehicle thefts are up, total criminal is up, and grand totals including accidents, DWI and the non-criminal civils are up drastically. The other significant information to report is that a Court Security Officer has been hired for District Court.

**COUNTY MANAGER'S REPORT:** County Manager David McSherry reported on the following items:

- Humanitarian Award presented to Luna County by Governor Grisham for the Asylum Seeker Emergency Shelter.
- Animal Ordinance will be published and presented to the Board for approval in November.
- Mr. McSherry attended Senator Heinrich's Energy Summit in Albuquerque regarding energy efficiency and solar.
- Met with District Judges Jennifer Delaney and Jared Holfacket as a follow up on planned improvements on maintenance and IT with a contractor.
- The County continues to support the Asylum Seeker Shelter by leasing the National Guard Armory to the City of Deming and Luna County is also paying for the PNM power at the armory.
- BLM has given the opportunity to have Luna County sign on to an agreement as a Cooperating Agency as part of the National Environment Policy Act (NEPA) process.

Executive Assistant Laura Garcia reported on the Census 2020 Complete County Committee. She explained she is working on getting the grant written and submitted for the amount of \$23,171.77. The funds received from the grant will be used for flyers, stickers and pins anything to get the public informed of the Census. She also mentioned Census is hiring for the 2020 Census, applications are accepted at [Census.gov](https://www.census.gov) if anyone is interested.

**INDIGENT CLAIMS REPORT:** Upon a motion by Commissioner Reedy and a second by Commissioner Sweetser, the meeting of the Board of County Commissioners was unanimously recessed and the meeting of the Indigent Hospital Claims Board convened. Budget and Procurement Director Joanne Hethcox reported on the July and August claims. Twelve claims were received for the month of July in the amount of \$13,465.94. The GRT collected in July was \$50,165.26. The cash balance in the account is \$992,326.92. In August there were no claims received and the amount Collected from GRT was \$53,564.19 with an ending balance of \$1,081,631.66. The amount encumbered for August was \$378,043.69. There was also an additional encumbered amount of \$292,000. Chair Smrkovsky expressed concern about approving the indigent claims report that was tabled from the meeting in August because it was not included in this month's packet or listed correctly on the agenda. Mr. Sweetser motioned to approve the September Indigent Claims Report as submitted and tabled the August Indigent Claims Report as report wasn't available for review. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote. Commissioner Sweetser motioned to recess as a Claims Board and reconvene as a County Commission. Commissioner Reedy seconded the motion which carried unanimously.

**PUBLIC COMMENT:** Mike Reitz Deming Animal Guardian Board Member and Director of Non-Kill Rescue DAGSHIP expressed his concerns with the amount of animals an individual is allowed to have per the new Animal Ordinance. He doesn't believe an individual could have the time to properly take care of 80 animals. He also mentioned that most Counties have a 20 animals cap in their ordinances.

Susan Shiffner who resides on Sunshine Road expressed concerns about issues with flies due to the way all the onion sheds are disposing of onions. She would like help from the Board to resolve this issue by creating an ordinance which prevents onion sheds disposing of produce within one mile of an occupied building.

Jack Harmon also a resident near Sunshine Road expressed his concerns with the fly issue and with the way produce is being dumped and disposed of in Luna County. Mr. Harmon suggests that the County start enforcing laws and quit allowing farmers and ranchers to dump their waste wherever they want to.

Edith Vazquez reported that she oversees the Luna County DWI Program. She mentioned that one of the programs for the DWI is a Moral Reconciliation Therapy (MRT) group, MRT is a type of cognitive behavioral therapy. Ms. Vazquez recognized Clara Renteria who introduced her MRT program to the Board. Ms. Renteria mentioned she is a recovering addict who has been working on bringing recovery awareness and support to the community. Ms. Renteria mentioned they will be celebrating Second Annual Recovery Awareness Walk. The route for the walk will start at the Chamber of Commerce and end at the Courthouse Park. A movie will be provided for the children which will start after the walk. Ms. Renteria thanked the Board and invites the Board to join them.

John Richmond from the Chamber of Commerce reported that on October 3<sup>rd</sup> Terrazas Funeral Chapel will be hosting "Hello Thursday" from 5-7 p.m. He also reported that an employer workshop was held last Friday at the Andy Silva Conference Center which went really well and was very informative. A ribbon cutting ceremony will be held at the Yarn Emporium on September 27<sup>th</sup> at noon at 208 S. Gold. Mr. Richmond also mentioned that the Duck Race event went well with 1070 individual racers at the event and the prize for both wet and dry track winners was \$1,420 each. He also mentioned they hosted over 100 vendors this year. The 5K event had over 50 participants and 4-H sold out of their 10,000 lbs. of roasted chili.

Christine Ann Harvey reported on several events coming to the City of Deming. She also mentioned they have been recertified by New Mexico Main Street as an accredited program and was told they are one of the highest performing programs in the State. Ms. Harvey mentioned NM Main Street will be funding through Capital Outlay the Sun Zia design at the intersection of Spruce and Gold which is a \$350,000 to \$450,000 project.

Alberta Morgan commented she is concerned about the money being spent on the entertainment center. Ms. Morgan feels the money could better be utilized for the people.

John Graver commented on his concern regarding the poor condition of the pool heater at the Aquatic Center. Chair Smrkovsky said she would share this information with the appropriate individual at the City who are responsible for the pool.

**CONSENT AGENDA:** Upon a motion by Commissioner Sweetser and a second by Commissioner Reedy the following items of the Consent Agenda were unanimously approved following a roll call vote.

- a. Accounts Payable: \$1,714,499.55
- b. Payroll: \$1,560,048.06

**OLD BUSINESS:**

- a. **Budget Review Committee Appointment:** Chair Smrkovsky tabled this item as the County Manager David McSherry had left the meeting due to a personal emergency.
- b. **Update on Strategic Plan:** Attorney Charles Kretek gave a brief update regarding the strategic plan. The item was then tabled by Chair Smrkovsky.

**NEW BUSINESS:** Chair Smrkovsky reviewed each item on the New Business Agenda with the Commissioners:

- a. **Exemption from Special Tax Assessment for Predator Control Program – Nutt Dairy LLC and NM Feeding Co:** Chair Smrkovsky entertained a motion to approve Exemption from Special Tax Assessment for Predator Control Program. Commissioner Reedy moved to approve the Resolution 17-28 with the exemptions. Commissioner Sweetser seconded the motion which carried unanimously following a roll call vote.
- b. **Appointment of Member of Labor Management Relations Board (Labor-Mark Myers):** Chair Smrkovsky entertained a motion to approve appointment of Mark Myers to Member of Labor Management Relations Board. Commissioner Sweetser moved to approve the appointment of Mark Myers. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote.
- c. **Appointment of Member of Labor Management Relations Board (Management – John Strand).** Chair Smrkovsky entertained a motion to approve appointment of John Strand Member of Labor Management Relations Board (Management). Commissioner Sweetser motioned to approve appointment of John Strand. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote.
- d. **Appointment of Member of Labor Management Relations Board (Independent – Gary Jeffreys)** Chair Smrkovsky entertained a motion to approve appointment of Gary Jeffreys Member of Labor Managements Relation Board (Independent). Commissioner Sweetser motioned to approve appointment of Gary Jeffreys. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote.
- e. **Resolution 19-47 Luna County Infrastructure Capital Improvement Plan (ICIP):** Chair Smrkovsky entertained a motion to approve the ICIP plan with the following priorities:

**List for 2021:**

1. Dispatch/IT Center Expansion/Improvement Facility
2. Roads Improvements
3. Entertainment Complex Improvements
4. Health Complex Renovation
5. Detention Center Improvements
6. Public Safety and County Vehicles
7. Regional Law Enforcement Complex
8. Park Improvements
9. Flood Prevention Projects
10. Luna County Courthouse Improvements
11. Solid Waste
12. Mimbres Valley/Special Events Center
13. Comprehensive Plan Update
14. NM 11 Hwy 180 Truck By-pass Route



15. Heavy Road Machinery/Equipment
16. Youth and Community Recreation Complex
17. Child Care Center Renovation
18. Computer Upgrades
19. Healing House

#### **List for 2022**

1. Hermanas Grade
2. Maintenance Department Equipment
3. Fiber Installation
4. Cattle Guards
5. Asset Management Plan
6. Luna County Affordable Housing Plan

Commissioner Reedy moved to approve Resolution 19-47 Luna County Infrastructure Capital Improvement Plan (ICIP) as per the changes and priorities as discussed and approved by the Commission. Commissioner Sweetser seconded the motion which carried unanimously following a roll call vote.

- f. **Resolution 19-48 Disposition of Personal Property:** County Attorney Charles Kretek explained property which is valued under \$5,000 will be sold either online or public auction. Mr. Kretek explained that the Detention Center has several old conex boxes cut up that are not useful for much. The City would like to use the conex boxes at the BMX for storage which would be considered an inter-governmental transfer, which is allowed under the statute. Chair Smrkovsky entertained a motion to approve Resolution 19-48 Disposition of Personal Property. Commissioner Reedy so moved to approve Resolution 19-48. Commissioner Sweetser seconded the motion which carried unanimously following a roll call vote.
- g. **Resolution 19-45 Budget Increases:** Budget and Procurement Director Joanne Hethcox explained most of these increases are grant related where we didn't have information during final budget. The grant which supported Ms. Jara's position is no longer being supported as monies were moved. General Fund picked up \$7,943.00 which is 10% of salary and benefits. Chair Smrkovsky entertained a motion to approve Resolution 19-45 Budget Increases. Commissioner Sweetser so moved to approve Resolution 19-45 Budget Increases. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote.
- h. **Resolution 19-46 Budget Transfers:** Budget and Procurement Director Joanne Hethcox explained that the first transfer is for the Teen Outreach Program which is contracted and needed to be moved from contract services to part time salary and benefits. She also explained that the second one is transferring funds to adjust salary due to job duty change for Deputy County Manager. Chair Smrkovsky entertained a motion to approve Resolution 19-46 Budget Transfers. Commissioner Reedy so moved to approve Resolution 19-46. Commissioner Sweetser seconded the motion which carried unanimously following a roll call vote.

- i. **Resolution 19-49 Electronic Eavesdropping/Unlawful Recording Policy:** Chair Smrkovsky entertained a motion to table this item. Commissioner Sweetser moved to table this item for more clarification. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote.
- j. **Certification of Tax Rate for 2019:** Chair Smrkovsky entertained a motion to approve Certification of Tax Rates for 2019. Commissioner Sweetser motion to approve 2019 Tax Rates. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote.
- k. **Keller Partners & Company (Possible Vote) Grant Writing & Lobbying:** Deputy County Manager Byron Hollister explained this came about because he believed the County was missing some grant opportunities. Mr. Hollister stated that he met with Keller Partners & Company and they felt Luna County would be first in line for most of the funds being sought after. They offered to come conduct an assessment and also to have us go there and help us lobby for funds as they become available after the assessment is complete. Mr. Hollister mentioned they approached the City of Deming to ask if they would be willing to partner with Luna County. Chair Smrkovsky entertained a motion to allow Luna County to enter into negotiations and possibly enter into a contract with Keller Partners & Company for the purpose of grant writing and lobbying. Commissioner Reedy so moved to authorize David McSherry to go forward with negotiations and possibly enter into a contract. Commissioner Sweetser seconded the motion which carried unanimously following a roll call vote.
- l. **Opportunity Zones:** Chair Smrkovsky informed the public that Luna County is part of an opportunity zone which includes the outskirts of Deming. She reported that Christine Logan with the State Economic Development is pushing this federal program. The State of New Mexico identified 121 opportunity zones and only 63 applied, all 63 were approved. Chair Smrkovsky believes we need to move forward with this as Luna County has opportunities. Ms. Smrkovsky is going to reach out to Christine Logan to set up a meeting soon.
- m. **Luna County Community and Economic Development Advisory Committee Resolution 17-13:** Chair Smrkovsky explained that Resolution 17-13 is still withstanding and expressed concerns regarding how the representatives are appointed.

**EXECUTIVE SESSION: to discuss bargaining strategy for collective bargaining sessions with AFSCME Local #1764 (LCSO) and AFSCME Local #2061 (LCDC) pursuant to Section §10-1-1 (H) (5) NMSA 1978.** Chair Smrkovsky entertained a motion to go into Executive Session to discuss bargaining strategy for collective bargaining sessions with AFSCME Local #1764(LCSO) and AFSCME Local #2061 (LCDC) pursuant to Section §10-1-1 (H)(5) NMSA 1978. Commissioner Sweetser so moved. The motion was seconded by Commissioner Reedy and carried unanimously following a roll call vote. The Commissioners went into Executive Session at 7:35 p.m. and returned from Executive Session at 8:02 p.m.

Chair Smrkovsky motioned to return from Executive Session where no other matters were discussed other than the matters pertaining to the bargaining strategy for collective bargaining sessions with AFSCME Local #1764 (LCSO) and AFSCME Local #2061 (LCDC) pursuant to Section §10-1-1 (H) (5)



NMSA 1978 where no action was taken. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.

**FY 2019-20 Final Budget approved by DFA presented by Joanne Hethcox:** Joanne Hethcox informed the board that the final approved budget and the letter in the packets is the final budget approved by DFA and that is binding upon every department in the County. Chair Smrkovsky entertained a motion to approve FY 2019-2020 Final Budget approved by DFA. Commissioner Sweetser so moved to approve FY 2019-2020 Final Budget. Commissioner Reedy seconded the motion which carried unanimously following a roll call vote. **FY 108 Compensation Levels:** County Attorney Charles Kretek asked the Board to approve holding off on implementing the raises to all the employees so that when the union employee's increases are approved all raises can be implemented at once. Chair Smrkovsky entertained a motion to delay raises for employees until all union negotiations are complete and all raises to employees be implemented at once, at the discretion of the Manager. Commissioner Reedy so moved. Commissioner Sweetser seconded which carried unanimously following a roll call vote.

**UPCOMING MEETINGS:** Chair Smrkovsky announced the following upcoming meetings and mentioned that a Budget meeting will also be scheduled.

Regular Meeting – October 10, 2019

**ADJOURN:** Upon a motion made by Commissioner Reedy and a second made by Commissioner Sweetser the meeting was adjourned at 8:07 p.m.

**ATTEST:**

**LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS**

\_\_\_\_\_  
**ANDREA RODRIGUEZ, LUNA COUNTY CLERK**

\_\_\_\_\_  
**BARBARA L. REEDY, DISTRICT 1**

**APPROVED:** \_\_\_\_\_

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**LINDA M. SMRKOVSKY, DISTRICT 2**

\_\_\_\_\_  
**JOHN S. SWEETSER, DISTRICT 3**

**MINUTES  
SPECIAL MEETING  
LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS  
Monday, September 23, 2019**

**BE IT REMEMBERED** that the Luna County Board of County Commissioners met in Special Session at 10:00 a.m. on Monday, September 23, 2019 in the County Commission Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting any and all business to come properly before the Board.

The following staff and elected officials were present: County Manager David McSherry, Deputy Manager Byron Hollister, Attorney Charles Kretek, Executive Assistant Laura Garcia, Clerk Andrea Rodriguez, Chief Deputy Clerk Berenda McWright, Assessor Michelle Holguin, Chief Deputy Assessor Isabelle Enciso, Administration Assistant Debra Seats, IT Technician Judy Hatch.

**CALL TO ORDER:** Chair Smrkovsky called the meeting to order at 10:04 a.m. and led the Pledge of Allegiance and the salute to the flag of the State of New Mexico.

**ROLL CALL:** Deputy Clerk Pilar Salcido called roll. The following members of the Board constituting a quorum were present: Barbara L. Reedy, District 1 was present telephonically.

**Barbara L. Reedy, District 1  
Linda M. Smrkovsky, Chair, District 2  
John S. Sweetser, District 3**

**PUBLIC INPUT:** Chair Smrkovsky opened the floor for Public Comment. No public comment was forthcoming.

**NEW BUSINESS:**

- a. **Columbus Flooding Declaration:** County Manager David McSherry asked the Commission to consider approving Resolution 19-50 which is an Emergency Disaster Declaration. Mr. McSherry stated that the recent heavy rainfall in various parts of the County on September 15<sup>th</sup> caused additional damage to infrastructure and mostly roads. Mr. McSherry provided photos and a description of the damaged areas. Mr. McSherry asked the Board to consider including the Village of Columbus to this Declaration as much of their damaged infrastructure feeds into Luna County's damaged infrastructure.

Eric Kiltz Recovery Officer from the Response and Recovery Bureau of the Department of Homeland Security and Emergency Management from the State of New Mexico came before the Board and reported that a damage assessment was completed last week with the Mayor of the Village of Columbus Esequiel Salas and Luna County Emergency Manager Michael O'Donnell. Mr. Kiltz said the damages sustained qualify the County for State

assistance, he mentioned he believes the threshold amount is in the \$60,000 to \$80,000 range and he is certain Luna County is going to exceed that. In order to actually get State assistance the County needs the approved Declaration and the completed Request for Disaster Assistant, this has already been given to the Emergency Manager Michael O'Donnell. Mr. Kiltz mentioned the State will need an estimate of the financial impact to the County. He stated that when they were out last week assessing the situation, they figured the amount to be about \$150,000, that was before they realized more roads were impacted and not considered in that amount. Mr. Kiltz said they were going out again to get a better firm estimate. The next step would be to figure out where to go to get money to assist the County. Both Luna County and Socorro Counties were impacted. He said the plan is to go to the Governor and ask for an Executive Order. Mr. Kiltz explained the process is not a quick process and it is a reimbursement based process. The County will have to expend funds to fix the roads first, then the County will be reimbursed based on eligible expenses. They reimburse 75% of eligible expenses so the County pays for 25% of expenses.

Chair Smrkovsky entertained a motion to approve Resolution 19-50 Emergency Disaster Declaration. Commissioner Sweetser motioned to approve Resolution 19-50 Emergency Disaster Declaration. Commissioner Reedy seconded the motion with a statement (below) which carried unanimously following a roll call vote.

Statement by Commissioner Reedy:

"I would like to disclose that I have family residing on one of the identified road. My position on the Declaration is not effected or influenced by that fact. My position is based on the numerous reports given in the meeting today and at the Managers office by the NM Department of Homeland Security and Emergency and at the request of a Luna County resident"

**ADJOURN:** Commissioner Sweetser motioned to adjourn. The motion was seconded by Commissioner Reedy and carried unanimously. Chair Smrkovsky adjourned the meeting at 10:21 a.m.

**ATTEST:**

**LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS**

\_\_\_\_\_  
**ANDREA RODRIGUEZ, CLERK**

\_\_\_\_\_  
**BARBARA L. REEDY, DISTRICT 1**

**APPROVED:** \_\_\_\_\_

\_\_\_\_\_  
**LINDA M. SMRKOVSKY, DISTRICT 2**

\_\_\_\_\_  
**JOHN S. SWEETSER, DISTRICT 3**

# Indigent Hospital Claims Office

David X. McSherry, County Manager

IHC Board Meeting August 8, 2019

IHC Board Meeting August 6, 2019				
Month	Number	Amount	Number	Denied
January	23	\$26,055.34	0	\$0.00
Feburary	6	\$14,781.78		
March	5	\$3,640.93		
April	13	\$2,412.27		
May	8	\$24,060.58		
June	1	\$51.51		
July	12	\$13,465.94		
August	0	\$0.00		
September	0	\$0.00		
October	0	\$0.00		
November	0	\$0.00		
December	0	\$0.00		
Total	68	\$84,468.35	0	\$0.00
This Month's Total	Mimbres Memorial Hospital			\$13,465.94
This Month's Total	Gila Regional Medical Center			\$0.00
This Month's Total	Memorial Medical Center			\$0.00
This Month's Total	Deming Fire Dept./EMS			\$0.00
This Month's Total	All Other Services			\$0.00
Total				\$13,465.94
Year to Date Total	Mimbres Memorial Hospital			\$76,136.55
Year to Date Total	All Other Hospitals			\$2,949.36
Year to Date Total	Deming Fire Dept./EMS			\$1,000.00
Year to Date Total	All Other Services			\$690.00
Total				\$80,775.91
Care of Prisoners This Month - Not including SNCP Funds				\$192,288.57
Care of Prisoners Year to Date Indigent - Not including SNCP Funds				\$562,452.40
Care of Prisoners Year to Date Inmate Prescriptions/OTC Meds				\$61,119.89
Care of Prisoners Year to Date Dr. Bills				\$16,213.25
Total Cost of Care of Prisoners Year to Date				\$639,785.54
Monies Received for July 2019				\$50,165.26
Balance in IHC Fund as of July 31, 2019				\$992,326.92
Encumbrances as of July 31, 2019				\$378,043.69
		Date	Amount Approved	Amount Denied
	Signatures	08/08/19	\$13,465.94	\$0.00
Barbara L. Reedy				
Linda M. Smrkovsky				
John S. Sweetser				

# Indigent Hospital Claims Office

David X. McSherry, County Manager

IHC Board Meeting October 10, 2019

Month	Number	Amount	Number	Denied
January	23	\$26,055.34	0	\$0.00
Feburary	6	\$14,781.78		
March	5	\$3,640.93		
April	13	\$2,412.27		
May	8	\$24,060.58		
June	1	\$51.51		
July	12	\$13,465.94		
August	0	\$0.00		
September	17	\$16,198.34		
October	0	\$0.00		
November	0	\$0.00		
December	0	\$0.00		
Total	85	\$100,666.69	0	\$0.00
This Month's Total	Mimbres Memorial Hospital			\$15,698.34
This Month's Total	Gila Regional Medical Center			\$0.00
This Month's Total	Memorial Medical Center			\$0.00
This Month's Total	Deming Fire Dept./EMS			\$0.00
This Month's Total	All Other Services			\$500.00
Total				\$16,198.34
Year to Date Total	Mimbres Memorial Hospital			\$91,834.89
Year to Date Total	All Other Hospitals			\$2,949.36
Year to Date Total	Deming Fire Dept./EMS			\$1,000.00
Year to Date Total	All Other Services			\$1,190.00
Total				\$96,974.25
Care of Prisoners This Month - Not including SNCP Funds				\$0.00
Care of Prisoners Year to Date Indigent - Not including SNCP Funds				\$655,963.86
Care of Prisoners Year to Date Inmate Prescriptions/OTC Meds				\$68,853.04
Care of Prisoners Year to Date Dr. Bills				\$16,795.25
Total Cost of Care of Prisoners Year to Date				\$741,612.15
Monies Received for September 2019				\$50,622.30
Balance in IHC Fund as of September 30, 2019				\$1,077,424.40
Encumbrances as of September 30, 2019				\$597,681.20
		Date	Amount Approved	Amount Denied
	Signatures	10/10/19	\$16,198.34	\$0.00
Barbara L. Reedy				
Linda M. Smrkovsky				
John S. Sweetser				

**October 10, 2019**

[illegible]



# **LUNA COUNTY, NEW MEXICO**

## **ORDINANCE 98**

### **ANIMAL CONTROL**

**AN ORDINANCE REPEALING ALL PREVIOUS ORDINANCES PERTAINING TO ANIMAL CONTROL (1, 33 AND 52) AND ESTABLISHING REGULATIONS, REQUIREMENTS AND PROCEDURES FOR THE CARE AND CONTROL OF ANIMALS**

**WHEREAS**, LUNA COUNTY, New Mexico is a rural area with a large population of DOMESTIC ANIMALS; and

**WHEREAS**, it is in the best interests of the health, safety and general welfare of the citizens of LUNA COUNTY, to establish provisions for the regulation and control of DOMESTIC ANIMALS, and to deter and prohibit the RUNNING AT LARGE of any ANIMAL, and to prevent NEGLECT of and CRUELTY to ANIMALS; and

**WHEREAS**, the COUNTY has authority to enact this Ordinance pursuant to Section 4-37-1, NMSA 1978; and

**WHEREAS**, Section 77-1-1 *et seq.*, N.M.S.A. 1978 Compilation establishes standards for the management of DOMESTIC ANIMALS, and further requires that each county shall make provision by ordinance for the seizure and DISPOSITION of dogs and cats RUNNING AT LARGE and not kept or claimed by any PERSON on their PREMISES, and further requires that each county shall provide for the IMPOUNDMENT of RABIES-SUSPECT ANIMALS and designate a part-time or full-time ANIMAL CONTROL OFFICER who shall be deputized to enforce ANIMAL control laws, orders, ordinances and regulations; and

**WHEREAS**, the Board of County Commissioners of LUNA COUNTY, New Mexico, has heretofore determined that the health, safety, and general welfare of the residents of LUNA COUNTY would be best served by the adoption of an updated ANIMAL Control Ordinance;

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners in and for the County of Luna, State of New Mexico, that this Ordinance be enacted pursuant to New Mexico law to read as follows:

LUNA COUNTY ANIMAL CONTROL ORDINANCE  
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DRAFT FOR BOCC CONSIDERATION 2019/2020

## ARTICLE I

## GENERAL PROVISIONS

### Section 1.1 Short Title and Intent

This Ordinance may be cited as the “Luna County Animal Control Ordinance” and is referred to hereinafter as “this Ordinance.” It is the intent of the Board of County Commissioners that enactment of this Ordinance will: protect ANIMALS from NEGLECT and abuse, protect residents from annoyance and injury, encourage responsible OWNERship of ANIMALS as pets, and assist in providing housing for ANIMALS in an ANIMAL SHELTER.

### Section 1.2 Definitions

As stated in this Ordinance, the following definitions shall apply unless otherwise specified.

**1.2.1 ABANDONMENT** means: 1). to leave an ANIMAL for more than 24 hours without making provisions for proper feeding, watering, shelter, including shade, and care, or, 2) to dispose, dump, or leave any ANIMAL, living or dead, on property other than one’s own without consent of that property owner and, with consent, without making provision for the adequate feeding, watering and shelter of the DOMESTIC ANIMAL, and, 3.) the failure to RECLAIM an impounded ANIMAL.

**1.2.2 ADOPTION** means: the retrieval of any ANIMAL from the COUNTY designated ANIMAL SHELTER and assumption of responsibility for proper care in accordance with this Ordinance.

**1.2.3 ANIMAL** means: any vertebrate or invertebrate member of the ANIMAL kingdom, except humans, provided that LIVESTOCK, except as may be specifically referred to herein, are specifically exempt from this Ordinance.

**1.2.4 ANIMAL CONTROL OFFICER (“ACO”)** means: any PERSON designated by LUNA COUNTY, directly or through any CONTRACTOR and any PERSON designated as such with the authority to enforce ANIMAL control laws, ordinances and regulation. The LUNA COUNTY SHERIFF and his/her deputies have the statutory authority to enforce this ordinance and take every action an ANIMAL CONTROL OFFICER is hereunder authorized to undertake; all references herein to an ANIMAL CONTROL OFFICER incorporates by reference the LUNA COUNTY SHERIFF and LUNA COUNTY SHERIFF’s Deputies.

**1.2.5 ANIMAL NUISANCES** means: any ANIMAL 1.)habitually or continuously barking, howling, or otherwise disturbing the inhabitants of LUNA COUNTY, 2.) kept and/or maintained in a manner as to disturb by noise and/or noxious or offensive odors, or 3.) that endangers the health and welfare of the inhabitants of LUNA COUNTY.

**1.2.6 ANIMAL RESCUE** means: any facility operated by a licensed or permitted PERSON or organization that RESCUE s ANIMALS for the purpose of temporarily taking CUSTODY of and caring for eight (8) or more ANIMALS at any one time until a permanent home or placement is found and is prohibited from the breeding of ANIMALS or operating a BREEDING FACILITY;

**1.2.7 ANIMAL SANCTUARY OR REFUGE (FACILITY)** means: any facility or PREMISES operated by a licensed or permitted PERSON or non-profit organization, or member of the same, RECOGNIZED by the COUNTY as an ANIMAL humane organization, where such facility or

PREMISES is operated for the purpose of taking permanent or indefinite CUSTODY , providing care, and bringing aid and comfort to more than eight (8) or more ANIMALs at any one time to ANIMALs that are not adoptable or transferrable, after exhaustion of all reasonable efforts to adopt or place such ANIMALs into a permanent home. ANIMALs may not be bred and must be STERILIZED within thirty (30) days of placement into CUSTODY of said ANIMAL SANCTUARY OR REFUGE.

**1.2.8 ANIMAL SHELTER** shall mean any facility operated privately by a non-profit ANIMAL humane entity and established or authorized by a municipality or COUNTY of the State of New Mexico for the purpose of bringing aid and comfort, housing, care and CUSTODY of eight (8) or more lost, STRAY, injured, unwanted or impounded ANIMALs and where ANIMALs are not bred or allowed to breed.

**1.2.9 ATTACK** means: to BITE, scratch, knock down, or chase.

**1.2.10 BASIC GROOMING** means: examination, attention and acts necessary to maintain eyes, ears, feet, nails, teeth, coat and skin of an ANIMAL in a healthy condition but does not include acts for the purpose of maintaining appearance only.

**1.2.11 BASIC MEDICAL CARE** means: reasonable medical care required by the species, including but not limited to required VACCINATIONS, examination by a VETERINARIAN, prompt veterinary care when required by age and species, appropriate internal and external parasite control and emergency medical care when required.

**1.2.12 BITE** means: one or more punctures of skin from a single BITE with any punctures of half the length, or greater, of the ANIMAL's canine teeth Multiple scratches or lacerations in more than one direction and inflicted by the claws or teeth of an ANIMAL that results in tearing of flesh will also be treated as a BITE for the purposes of QUARANTINE.

**1.2.13 BREEDER** means: any licensed or permitted PERSON or organization established for the purpose of breeding female dogs or cats to produce offspring with the intent to sell, gift or otherwise transfer OWNERSHIP of the offspring. All ANIMALs older than six (6) months of age must have INTACT ANIMAL Licenses. Breeding for the purposes of sale to commercial outlets or for the purpose of research, testing or laboratory experiments is not permitted. BREEDER does not include OWNERS with fewer than eight (8) ANIMALs with one or more permitted INTACT ANIMALs and with no more than two litters of ANIMALs in any calendar year for the location.

**1.2.14 BREEDING FACILITY** means: a permitted or licensed facility that exists for profit and where ANIMALs are bred for sale to third parties. All ANIMALs older than six (6) months must have INTACT ANIMAL Licenses.

**1.2.15 CANINE HYBRID** means: a dog resulting from the breeding of a domestic species with that of a wild species or breed of canine, such as a wolf or coyote and because of its wolf or coyote ancestry, cannot be vaccinated against rabies effectively. Any ANIMAL that, at any time, has been advertised, described or represented as a CANINE HYBRID , wolf-dog or wolf hybrid by its OWNER shall be considered a CANINE HYBRID for purposes of this Ordinance. An ANIMAL shall not be judged to be a CANINE HYBRID based strictly on its appearance.

**1.2.16 COMPLAINT** is a report that alleges violation of this Ordinance or a statute or regulation related to ANIMALs, made on a standardized form, submitted to LUNA COUNTY or its designated CONTRACTOR , or received by the LUNA COUNTY **SHERIFF** or the public ANIMAL SHELTER.

**1.2.17 CONFINEMENT** means: the restriction, detainment or ISOLATION of an ANIMAL at all times by the OWNER or keeper by secure fence, kennel (as ENCLOSURE ), or cage to prevent escape and inadvertent or unsupervised contact with the public.

**1.2.18 CONTRACTOR** means: the PERSON or entity engaged, retained or hired by LUNA COUNTY to enforce this Ordinance and operate the public ANIMAL SHELTER.

**1.2.19 COUNTY** means: the Board of County Commissioners of LUNA COUNTY, New Mexico, its designees, and the various departments of the LUNA COUNTY Government.

**1.2.20 COUNTY MANAGER** means: the COUNTY MANAGER of LUNA COUNTY or designated representative(s).

**1.2.21 CUSTODY** means: a PERSON or OWNER that has possession of an ANIMAL for more than seven (7) consecutive days or more than fourteen (14) days in any month, excluding VETERINARIANS or licensed KENNELs temporarily maintaining ANIMALs owned by others on their property. It does not mean physical control, CONFINEMENT, or RESTRAINT.

**1.2.22 CRUELTY** means: the intentional killing of an ANIMAL without lawful justification, or mistreating, injuring, maiming, disfiguring, tormenting, torturing, beating, mutilating, burning, scalding, poisoning, attempting to poison, or otherwise unnecessarily causing an ANIMAL to suffer physical or emotional harm. Any of the following may be deemed a separate act of CRUELTY : failing to meet any standard of care in this Ordinance; failing to provide necessary sustenance to an ANIMAL under that PERSON's CUSTODY or control; failing to provide adequate shelter; failing to provide potable water; failing to provide palatable, nutritious food of adequate quantity; taunting an ANIMAL; leaving an ANIMAL inside an ENCLOSED vehicle when the temperature is such that it will cause pain, suffering, or death; ABANDONMENT or NEGLECT of an ANIMAL; failing to take action when an ANIMAL is in need of basic or emergency medical care; ear-cropping, de-barking, tail docking, or alteration by a non-VETERINARIAN; EUTHANASIA by an un-qualified or licensed PERSON or when not conducted as humanely as possible when circumstances do not allow for a qualified or licensed PERSON.

**1.2.23 DISPOSITION** means: ADOPTION of an ANIMAL; return of an ANIMAL to the OWNER; release of an ANIMAL to a RESCUE organization; release of an ANIMAL to another ANIMAL SHELTER or to a rehabilitator licensed by the NM Department of Game and Fish or the United States Fish and Wildlife service; or EUTHANASIA of an ANIMAL;

**1.2.24 DOMESTIC ANIMAL** includes: dogs, cats, wolf hybrids, coyote hybrids, domestic ferrets and other ANIMALs commonly known and kept as domestic pets.



**1.2.25 EMERGENCY FIELD EUTHANASIA** means: the process to cause the death of an ANIMAL in an emergency situation when safe and humane transport of the ANIMAL is not possible.

**1.2.26 EMERGENCY MEASURES** means: any action taken by an ANIMAL CONTROL OFFICER in order to preserve the health and/or life of an ANIMAL or human being, including but not limited to entering vehicles or PREMISES, given probable cause, and detaining the ANIMAL to prevent imminent suffering, serious harm or death to the ANIMAL, a human or another ANIMAL.

**1.2.27 ENCLOSED** means: a parcel of land completely surrounded at the perimeter by a wall or fence of sufficient height and strength to contain ANIMALS within, or by an electric or invisible fencing that has been approved by the ANIMAL Control Unit supervisor or his/her designee. **UNENCLOSED** as used herein shall mean a parcel of land not completely surrounded at the perimeter by a wall or fence of sufficient height and strength to contain ANIMALS within.

**1.2.28 ESTABLISHMENT** means: a place of business together with its grounds and equipment.

**1.2.29 EUTHANASIA** means: to produce a humane death of an ANIMAL by standards deemed acceptable by the Board of Veterinary Medicine as set forth in its rules.

**1.2.30 EUTHANASIA AGENCY** means: a facility that provides shelter to ANIMALS on a regular basis, including a small ANIMAL impound facility, a humane society or a public or private shelter facility that temporarily houses STRAY, unwanted or injured ANIMALS, and that performs EUTHANASIA.

**1.2.31 EUTHANASIA DRUGS** means: non-narcotic Schedule II or Schedule III substances and chemicals as set forth in the Controlled Substances Act, Section 30-31-1, *et seq.* NMSA 1978 that are used for the purposes of EUTHANASIA and pre-EUTHANASIA of ANIMALS.

**1.2.32 EUTHANASIA TECHNICIAN** means: a PERSON licensed by the New Mexico Veterinary Board to euthanize ANIMALS for a EUTHANASIA AGENCY.

**1.2.33 EXOTIC ANIMAL** means: an ANIMAL of a species not commonly kept as a household pet or for food and fiber production but does not include domesticated birds or ferrets. EXOTIC ANIMALS may or may not be native to the area and may or may not be governed by existing wildlife regulations and regardless of training or domestication and are prohibited under this ordinance unless otherwise specifically allowed by Federal or State Law. This category does NOT include WILD ANIMALS.

**1.2.34 EXPOSURE TO RABIES** means: an exposure resulting from a BITE by an ANIMAL susceptible to rabies or from contact of the saliva of such ANIMAL with any break or abrasion of the skin.

**1.2.35 FELINE HYBRID** means: a cat resulting from the breeding of a domestic species with that of a wild species or breed of feline, such as an African Serval cat and because of its ancestry, cannot be vaccinated against rabies effectively. Any ANIMAL that, at any time, has been advertised, described or represented as a FELINE HYBRID by its OWNER shall be considered a

FELINE HYBRID for purposes of this Ordinance. An ANIMAL shall not be judged to be a FELINE HYBRID based strictly on its appearance.

**1.2.36 FERAL ANIMAL** means: any ANIMAL existing in the wild, living in an untamed state or that is a STRAY and has returned to an untamed state from domestication.

**1.2.37 GROOMING PARLOR** means: an ESTABLISHMENT or part thereof maintained for the purpose of performing cosmetic services for ANIMALS including, but not limited to bathing, brushing, grooming and nail trimming.

**1.2.38 GUARD DOG** means: a dog that is used to protect a commercial property, but excludes a dog used exclusively to guard LIVESTOCK.

**1.2.39 HARBOR** means: to allow STRAY ANIMALS to accumulate on one's PREMISES by feeding them without making effective provisions as required by this Ordinance for their RESTRAINT, VACCINATIONS, socialization, sterilization or other care or attempting to humanely trap, neuter and return.

**1.2.40 HOBBY BREEDER** means: a PERSON involved in showing or controlled breeding of dogs and cats that are registered with a nationally or internationally RECOGNIZED canine or feline registry organization.

**1.2.41 HOUSEHOLD** means: one (1) or more individuals, related or not, occupying the PREMISES and/or residing at one street address. A household pet or ANIMAL is DOMESTIC ANIMAL.

**1.2.42 IMMEDIATE CONTROL** means: the ability to exercise direct physical control over an ANIMAL by a capable and competent PERSON by use of a secure collar or harness, a secure leash in conjunction with a properly fitting harness or a secure and appropriate portable ANIMAL crate or cage.

**1.2.43 IMPOUNDING FACILITIES** means: any ANIMAL Control center, pound, ANIMAL SHELTER, KENNEL, veterinary hospital, lot premise or building maintained or contracted by a municipality or county for the care and CUSTODY of ANIMALS.

**1.2.44 IMPOUNDMENT** means: the taking into CUSTODY or CONFINEMENT in a facility designated for the keeping or CONFINEMENT of such ANIMALS.

**1.2.45 INSPECTION** means: a physical or visual INSPECTION by an ANIMAL CONTROL OFFICER of any PREMISES or ANIMAL for the purpose of ensuring compliance with the provisions of the Ordinance.

**1.2.46 INTACT ANIMAL** means: an ANIMAL that has not been STERILIZED.

**1.2.47 ISOLATION** means: the CONFINEMENT of an ANIMAL in an escape proof run or cage so that there is no possibility of direct contact with other ANIMALS or humans.

**1.2.48 KENNEL** means: an ESTABLISHMENT operated by a PERSON or entity for profit where dogs or cats are temporarily housed or boarded, kept, or maintained for grooming, breeding, boarding, training or selling to individuals regardless of whether it is operated by a PERSON or PERSON(s) or entity . The sale or transfer of ANIMALs to commercial outlets or for the purposes of research, testing, or laboratory experimentation is prohibited.

**1.2.49 LIVESTOCK** means: horses, cattle, llamas, pigs, sheep, goats, rabbits, fowl, or any other DOMESTIC ANIMALs typically used in the production of food, fiber, or other products or activities defined by the COUNTY MANAGER or his/ her designee as agricultural. Exempt from articles included in this ordinance unless specifically addressed as applies to article.

**1.2.50 LUNA COUNTY** refers to the unincorporated areas within the jurisdictional boundaries of the County of Luna, New Mexico.

**1.2.51 MICROCHIP IMPLANT** means: a passive electronic device that is injected into an ANIMAL by means of a hypodermic-type syringe device. Each MICROCHIP shall contain a unique and original number that is read by an electronic scanning device for purposes of ANIMAL identification and recovery by the ANIMAL's OWNERS.

**1.2.52 MICROCHIP READER** means: an electronic scanner with an operating frequency that is able to detect a MICROCHIP that has been IMPLANTED in an ANIMAL, and displays the number of the MICROCHIP to its operator.

**1.2.53 MISREPRESENTATION OF PEDIGREE** consists of either the giving, obtaining, misrepresenting or exhibiting of any type of registry certificate or transfer certificate, pertaining to the pedigree registry of any ANIMAL, knowing such certificate to be false or misleading, or to have been secured by means of false pretenses or false representations.

**1.2.54 MULTIPLE ANIMAL (SITE OR) FACILITY.** Any PREMISES where eight (8) or more dogs and/or eight (8) or more cats of at least six (6) months of age, excluding litters and ANIMALs less than six (6) months of age, are kept as companion ANIMALs. A MULTIPLE ANIMAL SITE OR FACILITY is a facility that is not operated as or required to be PERMITTED as an ANIMAL RESCUE , ANIMAL SANCTUARY OR REFUGE, ANIMAL SHELTER, KENNEL or BREEDING FACILITY and where the business of buying, selling, breeding, training or boarding for compensation or profit is prohibited and not carried on, with the exception that the sale of not more than two (2) litters per year is allowed. The operation of a MULTIPLE ANIMAL SITE OR FACILITY for commercial purposes means: any PREMISES where eight (8) or more dogs and/or cats of at least six (6) months of age are kept where the business of buying, selling, breeding, training or boarding for compensation or profit is conducted and requires a separate PERMIT for each commercial activity but does not include veterinary clinics or hospitals, the County ANIMAL SHELTER or a research laboratory.

**1.2.55 NEGLECT** means: to leave an ANIMAL without sufficient quantity of good quality food, water or shelter for more than twenty-four (24) hours, regardless of whether such action or inaction is intentional or voluntary. For any dog left outside and unattended for more than 30 minutes during any period, the following must be provided: the shelter shall be a moisture-proof and wind-

proof and of suitable size to accommodate the dog, allowing for freedom of movement to make normal postural adjustments, including the ability to stand, turn around and lie down with limbs outstretched. It shall be made of durable material with a solid, moisture-proof floor raised at least three inches from the ground. The roof shall extend over the doorway and not permit rain to enter inside the shelter. The shelter shall not be constructed of metal or any material that readily conducts heat or cold. Between November 1st and March 31st, structures must have a windbreak at the entrance and must contain a sufficient quantity of suitable, clean bedding material consisting of straw, cedar shavings, or the equivalent to protect against cold and dampness. Hay, blankets, rags and other materials that retain moisture shall not be utilized for bedding. Between May 1st and October 31st of any year, all dogs must be afforded one or more areas of shade by natural or artificial means large enough to accommodate the entire body of the dog at one time to provide protection from the direct rays of the sun. Shaded area must be separate and outside of any shelter. "Outside and unattended" for purposes of this section, shall mean any dog who is confined outdoors for a duration of longer than 30 minutes and not in visual range and physical presence of the OWNER.

**1.2.56 OWNER/CARETAKER/RESPONSIBLE PERSON** means: a PERSON 18 years of age or older or the parent or guardian of a PERSON under 18 years of age, group of PERSONs, or business entity who owns, HARBORS, keeps an ANIMAL, has one in his care, or permits any ANIMAL to remain on or about the PREMISES owned or controlled by him. OWNER shall also mean any governmental entity owning, keeping, or HARBORing any ANIMAL that has been kept in captivity or CONFINEMENT for more than thirty (30) consecutive days.

**1.2.57 PERSON** means: an individual, HOUSEHOLD, firm, partnership, corporation, company, society, association or legal entity, and every officer, agent or employee thereof.

**1.2.58 PEACE OFFICER** shall mean any duly appointed ANIMAL CONTROL OFFICER, **SHERIFF**'s deputy or other law enforcement officer within the jurisdiction or boundaries of LUNA COUNTY, New Mexico.

**1.2.59 PERSON/OWNER** means: any PERSON, group or entity who possesses, keeps, HARBORS or has control or CUSTODY of an ANIMAL or who knowingly permits the possession, HARBORing, control or CUSTODY of an ANIMAL on their property.

**1.2.60 PET IDENTIFICATION** means: a rabies tag, LUNA COUNTY license tag, MICROCHIP tag, or PET IDENTIFICATION tag providing OWNER contact information.

**1.2.61 PET MILL** is a facility or PERSON excluded from the definition of a BREEDER and not licensed or required to be licensed as a BREEDING FACILITY that has any ANIMALs without INTACT ANIMAL PERMITs or that has INTACT ANIMAL PERMITs but where more than 2 litters of ANIMALs are produced in any calendar year. Such facilities are prohibited and such facilities that are operated for the purpose of breeding ANIMALs for compensation or profit that emphasizes profit or gain over ANIMAL welfare, will be subject to prosecution. Such facilities are generally of substandard ANIMAL welfare conditions and where ANIMALs are often afflicted by infectious diseases, such as parvo and distemper. Substandard conditions include, but are not limited to, overbreeding, inbreeding, minimal or no veterinary care, poor quality or insufficient food or shelter, lack of socialization with humans and/or other ANIMALs,



overcrowding, makeshift cages and frequent death or EUTHANASIA of ANIMALS. Such substandard conditions are intended to be addressed through regulatory enforcement.

**1.2.62 PET SHOP** means: any PREMISES, social media or internet site or posting, or part thereof, which engages in the purchase, sale, exchange or hire of ANIMALS of any type, except that the term shall not apply to shelters or PREMISES used exclusively for the sale of LIVESTOCK.

**1.2.63 PREMISES** means: a parcel of land and the structures thereon.

**1.2.64 (PROPER) ENCLOSURE** means: secure CONFINEMENT indoors or outdoors, such as in a fenced yard, locked pen, or other structure, such structure being designed to prevent the ANIMAL from escaping the confined area and also preventing young children from entering the confined area, but does not include chaining, restraining or otherwise affixing the ANIMAL to a stationary object.

**1.2.65 PROFESSIONAL ANIMAL ESTABLISHMENT** means: any KENNEL, grooming parlor, or PET SHOPS, with the exception of state inspected veterinary hospitals and federally inspected laboratory facilities and zoos.

**1.2.66 POULTRY** is any chicken, duck, goose, turkey or similar bird.

**1.2.67 QUALIFIED ASSISTANCE ANIMAL** means:

- 1.2.67.1 A dog trained or being trained by a RECOGNIZED school for training dogs to assist PERSONS with disabilities; or
- 1.2.67.2 An ANIMAL RECOGNIZED as a SERVICE ANIMAL pursuant to the Americans with Disabilities Act of 1990; or
- 1.2.67.3 Any other ANIMAL approved by the NM Governor's Commission on Disability as acceptable in public places and trained to provide a defined special assistance to a PERSON with a disability.

**1.2.68 QUARANTINE** means: detention or ISOLATION of an ANIMAL in order to observe for rabies providing for the strict containment of an ANIMAL in ISOLATION pursuant to authority under this Ordinance or by order of the district health officer within a closed cage or paddock to control the spread of rabies or other contagious disease.

**1.2.69 RABIES-SUSPECT ANIMAL** means: any ANIMAL which has been exposed to or is suspected of having been exposed to rabies through a BITE by any other ANIMAL or through contact with any other ANIMAL known or reasonably suspected to be infected with rabies. Any such ANIMAL is subject to state regulation and/or statute.

**1.2.70 RECLAIM** means: the retrieval of a DOMESTIC ANIMAL from the ANIMAL SHELTER by its OWNER or RESPONSIBLE PERSON. The Reclamation Period within which an ANIMAL's OWNER may RECLAIM their ANIMAL from the County ANIMAL SHELTER is five (5) business days in which the Shelter is open to the public for at least four (4) continuous hours.

**1.2.71 RECOGNIZED** means: the acknowledgement of validity and approval, such approval to be affirmed or granted by the Luna COUNTY MANAGER, unless specific alternate authority is noted herein.

**1.2.72 RESCUE** means: to legally set free from danger.

**1.2.73 RESTRAINT** means: keeping any ANIMAL under the IMMEDIATE CONTROL of a RESPONSIBLE PERSON on a leash or lead.

**1.2.74 RESTITUTION** means: a monetary amount awarded by a court of competent jurisdiction to compensate a victim whose person or property, including ANIMALS, has been injured, killed or damaged by another ANIMAL as a result of a violation of this Ordinance but specifically excludes any fines or penalties imposed under this Ordinance or any applicable statute, rule, or regulation.

**1.2.75 RUNNING AT LARGE** means: free of physical RESTRAINT on private or public property other than that belonging to, occupied by, or controlled by the OWNER of the ANIMAL and the ANIMAL is not under the physical control of the OWNER or not obedient to the OWNER's commands.

**1.2.76 SERIOUS INJURY** means: a physical injury that results in broken bones, multiple BITES or disfiguring lacerations requiring sutures or reconstructive surgery.

**1.2.77 SERVICE ANIMAL** is any of the following ANIMALS, as defined in Section 28-11-2, NMSA 1978, now or as subsequently amended, including:

1.2.76.1 **Emotional Support ANIMAL, Comfort ANIMAL or Therapy ANIMAL** shall mean an ANIMAL selected to accompany an individual with a disability that does not work or perform tasks for the benefit of an individual with a disability and does not accompany at all times an individual with a disability.

1.2.76.2 **Qualified SERVICE ANIMAL** shall mean any qualified SERVICE dog or qualified SERVICE miniature horse that has been or is being trained to provide assistance to an individual with a disability; but "qualified SERVICE ANIMAL" does not include a pet, an emotional support ANIMAL, a comfort ANIMAL or a therapy ANIMAL.

1.2.76.3 **Qualified SERVICE Dog** shall mean a dog that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities; and

1.2.76.4 **Qualified SERVICE Miniature Horse** shall mean a miniature horse that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities.

**1.2.78 SHERIFF** means: the LUNA COUNTY **SHERIFF** or his/her designee.

**1.2.79 SPECIAL ANIMAL PERMIT** means: any one of several PERMITs authorized and required by the Ordinance for the possession or handling of ANIMALS beyond normal companion ANIMAL OWNERSHIP and includes, but is not limited to: Commercial Operation Permit; KENNEL Permit; Foster/RESCUE Permit; Shelter Permit; Sanctuary PERMIT; RESCUE

PERMIT; Transport PERMIT; Multiple ANIMAL PERMIT; BREEDER PERMIT; and other such PERMITs as may be authorized from time to time by LUNA COUNTY.

**1.2.80 STERILIZE** means: to be rendered permanently incapable of reproduction and rendering an ANIMAL unable to reproduce, either by spaying or a female or neutering of a male ANIMAL.

**1.2.81 STERILIZATION DEPOSIT** means: the fee that is charged by the ANIMAL SHELTER when a PERSON RECLAIMs, adopts or RESCUE s an unSTERILIZED ANIMAL; the sterilization deposit may or may not be refunded when the ANIMAL is STERILIZED.

**1.2.82 STRAY** means: an ANIMAL found RUNNING AT LARGE away from its home or that is unattended or allowed to run at large away from its home.

**1.2.83 SUPERVISING VETERINARIAN** means: a PERSON who is a licensed VETERINARIAN, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license.

**1.2.84 TETHERING** means: to tie an ANIMAL with a rope or chain to restrict its movement.

**1.2.85 VACCINATION** shall mean: any injection of vaccine for the purpose of immunizing an ANIMAL against rabies approved by a State VETERINARIAN and administered by a licensed VETERINARIAN for the purpose of immunizing an ANIMAL against rabies as required by Section 77-1-3, NMSA 1978.

**1.2.86 VETERINARIAN** means: a PERSON who with a Doctor of Veterinary Medicine degree and licensed as such by the State of New Mexico, Board of Veterinary Medicine.

**1.2.87 WILD ANIMAL** means: a living creature that is untamed or domesticated in a natural state of a species that, in its natural state or life, is dangerous or ferocious including, but not limited to: wolves; foxes; coyotes; dingoes; other non-domesticated or wild canines; lions; tigers; cheetahs; leopards; bobcats; pumas; panthers; mountain lions; jaguars; other non-domesticated, wild or hybrid felines; bears; raccoons; skunks; bats; primates; venomous, poisonous and constricting snakes; alligators, crocodiles, caimans, other poisonous lizards and spiders; piranhas and venomous fish and piranhas; elephants; non-domesticated or wild ferrets; and ANIMALs protected by applicable endangered or protected species acts, such as bald eagles, golden eagles and various parrots and other birds. The possession of a WILD ANIMAL is prohibited under this Ordinance unless specifically allowed by Federal or State law.

## **ARTICLE II        OWNER'S DUTIES**

### **Section 2.1    Animal Vaccinations**

2.1.1 No PERSON shall keep, own, or HARBOR any member of the canine or feline species over three (3) months of age within this COUNTY unless that dog or cat is vaccinated against rabies. Every such dog or cat shall be vaccinated against rabies within thirty (30) days upon any PERSON acquiring OWNERSHIP or taking CUSTODY, care and control of said ANIMAL. Upon request or demand by the **SHERIFF** or his designee, every OWNER shall provide proof of the ANIMAL's rabies VACCINATION.

2.1.2 Rabies VACCINATIONs must be administered by or under the supervision of a VETERINARIAN. Any VETERINARIAN who vaccinates DOMESTIC ANIMALs for rabies shall issue a serially numbered tag and certificate for each VACCINATION. Each DOMESTIC ANIMAL must be revaccinated before the expiration of the first and each subsequent rabies VACCINATION period.

2.1.3 No PERSON may keep any DOMESTIC ANIMAL with any symptom of rabies. Any PERSON observing an ANIMAL with any symptom of rabies shall notify the ANIMAL CONTROL OFFICER or the LUNA COUNTY SHERIFF's Department immediately.

## **Section 2.2 Sterilization**

2.2.1 Sterilization and neutering is required for dogs and cats over the age of 6 months unless an annual INTACT ANIMAL PERMIT is purchased or a need-based waiver is granted for each ANIMAL.

2.2.2 Unless granted a Need Based Waiver Every dog or cat RECLAIMed, adopted or RESCUed from the COUNTY ANIMAL control shelter shall be spayed or neutered by a licensed VETERINARIAN at the expense of the responsible party or the OWNER must obtain an INTACT ANIMAL PERMIT and have the Intact ANIMAL microchipped within thirty (30) days of the date of RECLAIM/ADOPTION/RESCUE .

2.2.3 In addition to any other lawful fees due, any PERSON RECLAIMing or adopting a dog or cat from the COUNTY shelter shall pay a STERILIZATION DEPOSIT. Fees for licenses, PERMITs and as required pursuant to this ordinance shall be established and adopted annually through resolution by the Board of County Commissioners. Absent an INTACT ANIMAL PERMIT, RECLAIMed ANIMALs shall not be released until sterilization has been administered unless allowed otherwise herein.

## **Section 2.3 Sterilization Agreement and Deposit Required**

2.3.1 Pursuant to Section 77-1-20, NMSA 1978, a sterilization deposit is required by any PERSON RECLAIMing or adopting an ANIMAL from the COUNTY ANIMAL SHELTER.

2.3.2 No ANIMAL shall be released from an ANIMAL SHELTER to an adopting PERSON unless a sterilization has been administered after payment of the STERILIZATION DEPOSIT, as provided herein.

2.3.3 In addition to any ADOPTION fee charged, a STERILIZATION DEPOSIT of at least Twenty-Five Dollars (\$25.00) shall be imposed on the ADOPTION of each ANIMAL from an ANIMAL SHELTER.

2.3.4 ANIMALs less than six months of age shall be released only upon payment of the ADOPTION fee and a STERILIZATION DEPOSIT and after the adopting PERSON has signed an agreement stating he will have the adopted ANIMAL STERILIZED when it is not older than six (6) months of age.

2.3.5 Adult ANIMALs over the age of six months shall be released only after payment of the ADOPTION fee and a STERILIZATION DEPOSIT and sterilization has been administered

2.3.7 An unSTERILIZED (Intact) ANIMAL RECLAIMed by its OWNER shall only be released without being STERILIZED upon payment of an INTACT ANIMAL PERMIT and other IMPOUNDMENT fees imposed by the shelter ; or payment of a STERILIZATION DEPOSIT, administering of sterilization, and payment of other IMPOUNDMENT fees imposed by the shelter

## **Section 2.4 Restraint and Control Requirements**

2.4.1 A PERSON owning or having CUSTODY and care over an ANIMAL shall keep the



ANIMAL under humane physical RESTRAINT at all times and shall maintain IMMEDIATE CONTROL over such ANIMALs when away from the OWNER's property.

2.4.2 ANIMALs not restrained by IMMEDIATE CONTROL, secure ENCLOSURE or humane TETHERING shall be deemed an unrestrained ANIMAL and subject to enforcement actions and penalties by ANIMAL CONTROL OFFICERS.

2.4.3 All pens, kennels (as ENCLOSURE s), stalls or other secure ENCLOSURE s used to restrain an ANIMAL shall be properly constructed and maintained in a manner and condition that does not expose ANIMALs or humans to sharp edges and other dangers. Locking or latching devices shall be installed on all gates or doors to ANIMAL ENCLOSURE s in such a manner as to be inaccessible to ANIMALs and small children to prevent ANIMAL escape and unauthorized entry.

2.4.4 A rope, chain, or other device may be used to tether a dog or other ANIMAL on one's property, provided the following criteria are met:

2.4.4.1 TETHERING or restraining must be to a stationary object and shall not be attached to any object that can be moved or dragged by the ANIMAL except that a running line, pulley or trolley system.

2.4.4.2 The device must be affixed to the ANIMAL by use of a non-abrasive, comfortably fitted collar or harness and shall not be attached to a choke chain collar, pinch collar or prong collar.

2.4.4.2 The device shall not be a logging or tow chain and must be at least 10 feet long. The device must be fastened so the ANIMAL can sit, walk and lie down comfortably; and must be unobstructed by objects that may cause the device or ANIMAL to become entangled or strangled. Any chain or tether shall have swivels on both ends.

2.4.4.3 The ANIMAL must have constant access to adequate shade, shelter, food and potable water as defined herein.

2.4.4.5 TETHERING an ANIMAL must be done humanely as not to cause behavioral or physical changes and/or CRUELTY to the ANIMAL. No chain or tether shall weigh more than 1/8 of the dog's weight.

2.4.4.6 TETHERING to a stationary object shall not be for more than six (6) continuous hours in any twelve (12) hour period.

2.4.4.7 TETHERING to a running line, pulley or trolley system shall not be for more than twelve (12) continuous hours in any twenty-four (24) hour period.

2.4.4.8 An ANIMAL shall not be tethered in any UNENCLOSED area where people or other ANIMALs can freely wander into the proximity of the tethered ANIMAL.

2.4.4.9 The tether shall have working swivels on both ends and fastened in such a way as to allow the ANIMAL to sit, walk and lie down with natural motions and free of obstructions that may cause entanglement or strangulation.

2.4.5 The area where the ANIMAL is restrained must be kept free of garbage and other debris that might endanger the ANIMAL's health or safety. Feces shall not be allowed to accumulate and shall be cleaned up by the OWNER.

2.4.7 Nothing in this section shall be construed as allowing any ANIMAL under physical RESTRAINT to commit any act defined as unlawful in this ordinance.

2.4.8 A PERSON who uses electric or invisible fencing designed to confine an ANIMAL to his property must clearly post a notice in two separate locations upon the property that such a device is in use.

2.4.9 The presence of any uninvited dog or cat upon public property or the private

property of any PERSON other than its OWNER shall be prima facie evidence that the OWNER has violated the provisions of this section, and shall make such ANIMAL liable to surrender to an ANIMAL CONTROL OFFICER as would apply to the case of a dog RUNNING AT LARGE.

2.4.10 This provisions of this section do not apply to ANIMALs being properly used for herding or working LIVESTOCK, hunting activities, law enforcement activities, search and rescue and while engaged in training sessions.

## **Section 2.5 Animal Licensure and Identification**

2.5.1 A PERSON owning or having care, CUSTODY and control of a dog or cat of at least three (3) months of age or more, shall obtain an annual LUNA COUNTY Pet License issued by the LUNA COUNTY Code Enforcement Department.

2.5.2 Applications for a Pet License shall be made within thirty (30) days of acquiring OWNERSHIP or care, CUSTODY or control of a dog or cat.

2.5.3 Proof of current rabies VACCINATION and Pet License shall be required to obtain or renew a Pet License.

2.5.4 Pet Licenses shall include Pet License Tag Number, name and address of OWNER, ANIMAL description and picture, rabies VACCINATION tag number and date, MICROCHIP number (if any), record of other VACCINATIONS and sterilization information or INTACT ANIMAL Permit Number.

2.5.5 The COUNTY or its designee shall maintain a registry of all Pet Licenses.

2.5.6 Unless granted a Need-Based Wavier, all dogs and cats that are impounded as STRAYs shall be required to have MICROCHIP s IMPLANTed at the OWNER's expense when RECLAIMed by their OWNER, adopted or RESCUE d. ANIMAL identification through MICROCHIP s and/or tags are encouraged as a means of returning lost or STRAY ANIMALs to their OWNERS, as is registration of the ANIMAL's description, OWNER's name, address, and telephone number, with VETERINARIANS or a national registry.

2.5.7 Pet Licenses can be refused or revoked if the applicant has withheld or falsified information on any application or has been convicted of multiple violations of this ordinance or been convicted a crime related to the abuse or mistreatment of ANIMALs.

2.5.8 Required ANIMAL tags shall be worn while away from the OWNER's property and during any veterinary or grooming care and may not be transferred to another ANIMAL or OWNER.

2.5.9 Fees for Pet Licenses shall be set by Resolution of the Board of County Commissioners but no fee shall be charged for qualified SERVICE or therapy ANIMALs.

## **Section 2.6 Care and Maintenance of Animals**

2.6.1 It is unlawful for a PERSON to fail, refuse and/or NEGLECT to provide any ANIMAL in his charge or CUSTODY with such care and husbandry as to maintain the good health and well-being of the ANIMAL. Such care and husbandry shall include, but not be limited to, adequate wholesome food, provided daily, fresh potable water, available at all times, clean adequate living area, shade, professional veterinary care and necessary grooming and daily cleaning and removal of feces and waste.

2.6.2 To maintain good health and protection from weather elements, any ANIMAL, except horses, cattle, pigs, sheep or goats, habitually kept outside shall be provided with a structurally sound, weatherproof ENCLOSURE , large enough to accommodate the ANIMAL comfortably, with adequate shade and ventilation and built to provide adequate protection and

comfort from weather and temperature extremes.

2.6.2.1. Dog Housing shall provide a minimum of flat floor space as follows:

2.6.2.1.1 One dog up to 15 pounds = at least 4 square feet;

2.6.2.1.2 One dog 15 pounds up to 30 pounds = at least 8 square feet;

2.6.2.1.3 One dog 30 pounds up to 65 pounds = at least 12 square feet;

2.6.2.1.4 One dog 65 pounds or more = at least 20 square feet.

2.6.2.2 Dog Housing shall provide vertical space of at least 1.5 times the height of the dog at the shoulder.

2.6.2.3 If more than one dog occupies the same primary ENCLOSURE , in addition to the minimum requirement for one dog, each additional dog must provide at least one-half of the minimum square footage required by weight.

2.6.2.4 Dog beds are recommended but not required but if dog beds are provided, a bed must be provided for each dog occupying the same primary ENCLOSURE .

2.6.2.5 Cat Housing, if kept in a crate or cage, shall provide a minimum of 4 square feet with food, litter and bedding spaced apart as possible with sufficient space to stand, stretch and move around. 2.6.2.6 If colony rooms are used as Cat Housing, at least 18 square feet per cat must be provided with the ability for the cats to maintain at least 3 feet between themselves and other cats. Cat perches or walkways do not count toward the minimum square footage but outdoor access is included in the minimum square footage. A 12' x 18' or larger litter pan or box must be provided for every three cats in colony rooms; such pan or box to be constructed of materials suitable for sterile cleaning, such as stainless steel or fiberglass.

2.6.2.7 UnSTERILIZED males must be segregated from females and kittens less than 6 months old must be housed separately with their mothers.

2.6.3 ANIMAL ENCLOSURE s shall be maintained free of garbage, feces and other debris that might endanger the ANIMAL's health or safety.

2.6.4 ANIMALs and their ENCLOSURE s shall be maintained free of insect infestations, such as ants, wasps, fleas, ticks, maggots and other parasites, and other infestations, such as mice, rats and other rodents, which might endanger the ANIMAL's health or safety.

2.6.5 ENCLOSURE s where an ANIMAL is maintained for periods exceeding twenty-four (24) hours must be of adequate size to prevent overcrowding and all for normal exercise according to species, and in no case shall the minimum twice-daily exercise be less than twenty (20) minutes each session, with documentation maintained for each ANIMAL.

2.6.6 ANIMALs with infectious diseases or with unknown VACCINATION history must be held in ISOLATION in housing providing the appropriate minimum space until evaluated and treatment completed.

2.6.7 ANIMAL crates may not be stacked and flooring may not be wires or slats unless properly covered to prevent paws and feet from slipping through.

## **Section 2.7 Animal Waste**

The OWNER or keeper of ANIMALs, such as dogs, cats or any small household ANIMAL shall maintain a watertight and fly tight receptacle for feces from such ANIMALs which shall be emptied frequently and in such a manner so as to prevent a nuisance or health hazard. Such receptacles shall be securely covered at all times except when opened to deposit feces. No feces will be allowed to accumulate except in such receptacles.

## **ARTICLE III PROHIBITED ACTIVITIES**



### **Section 3.1 Animals Biting Persons**

3.1.1 The OWNER of an ANIMAL that BITES a PERSON and a PERSON bitten by an ANIMAL has a duty to report that occurrence to the ANIMAL Control Unit within 24 hours of the occurrence. The OWNER of an ANIMAL that BITES a PERSON shall surrender said ANIMAL to an ANIMAL CONTROL OFFICER if the officer deems it necessary to impound said ANIMAL for a period of observation.

3.1.2 A physician who renders professional treatment to a PERSON bitten by an ANIMAL shall report to the LUNA COUNTY **SHERIFF** that he has rendered professional treatment within 24 hours of his first professional attendance. The physician shall report the name and address of the PERSON bitten as well as the type and location of the BITE. The physician shall report the name and address of the OWNER of the ANIMAL that inflicted the BITE, if known and any other facts or details that may assist the ANIMAL Control Unit in ascertaining the immunization status of the ANIMAL.

3.1.3 An ANIMAL that BITES a PERSON shall be confined securely at a place and for a period of time deemed necessary by the ANIMAL CONTROL OFFICER. The OWNER of the ANIMAL shall bear the cost of CONFINEMENT .

3.1.4 ANIMAL CONTROL OFFICERS may take up and impound the ANIMAL into protective CUSTODY for the period of the QUARANTINE and the OWNER shall pay all related costs of the IMPOUNDMENT prior to RECLAIMING the ANIMAL.

3.1.5 The ANIMAL CONTROL OFFICER may consent to CONFINEMENT of the ANIMAL on the OWNER's PREMISES. The PREMISES where the home CONFINEMENT is to occur shall be inspected and approved for such purpose by the ANIMAL CONTROL OFFICER. The OWNER of the ANIMAL shall be required to enter into an indemnity agreement on a form approved and prescribed by the Supervisor for such home CONFINEMENT .

3.1.6 If the ANIMAL shows signs of sickness or abnormal behavior, or if the ANIMAL escapes CONFINEMENT , the PERSON shall immediately notify the ANIMAL CONTROL OFFICER. The PERSON having CUSTODY of an ANIMAL that dies during the CONFINEMENT period shall notify the ANIMAL CONTROL OFFICER and surrender the carcass of the ANIMAL immediately to an ANIMAL CONTROL OFFICER.

### **Section 3.2 Abandonment**

It is unlawful for a PERSON to abandon an ANIMAL or cause an ANIMAL to be abandoned.

### **Section 3.3 Animal Nuisances**

3.3.1 It is unlawful for a PERSON to allow an ANIMAL to persistently or continuously bark, howl or make noise common to their species or otherwise disturbs the peace and quiet of inhabitants of the COUNTY for more than sixty (60) consecutive minutes.

3.3.2 No PERSON may keep any ANIMALs and/or LIVESTOCK in unclean or unsanitary conditions or in such numbers so as to result in noxious or offensive odors or accumulations of feces, urine or other bodily wastes, that disturbs others or confine the ANIMALs in such conditions so as to become unmanageable or potentially vicious.

3.3.3 No OWNER or RESPONSIBLE PERSON of any DOMESTIC ANIMAL shall allow that ANIMAL to defecate upon public property or upon any private property other than the property of the OWNER of the ANIMAL without thoroughly and immediately removing and legally disposing of the feces.

3.3.4 OWNERS or PERSONs with the CUSTODY , care and control of ANIMALs shall



prevent ANIMALS from causing damage or being a nuisance to another PERSON or property and shall be financially responsible for any such damage or nuisance, in addition to being responsible for any fines or penalties assessed.

3.3.5 OWNERS or PERSONS having CUSTODY , care and control over a female ANIMAL in estrus shall confine the ANIMAL in such a way that prevents the ANIMAL from becoming a nuisance.

3.3.6 ANIMAL CONTROL OFFICERS shall have the authority to enter PREMISES on which a nuisance ANIMAL is located in an effort to abate the nuisance. If the OWNER or PERSON having CUSTODY , care and control over the nuisance ANIMAL is unable or unwilling to abate the nuisance or cannot be located on the property, the ANIMAL CONTROL OFFICER may seize and impound the ANIMAL, subject to the OWNER's right of reclamation after payment of any assessed fines or penalties.

### **Section 3.4 Animals at Large**

3.4.1 It is unlawful for a PERSON to allow or permit any ANIMAL to run at large in or on any alley, street, sidewalk, vacant lot, public property, other UNENCLOSED place in the COUNTY, or private property without permission of the property OWNER.

3.4.2 An ANIMAL permitted to run at large in violation of this section is declared to be a nuisance and a menace to the public health and safety. Such ANIMAL may be taken up and impounded. An officer may not enter a private building or residence in pursuit of an ANIMAL without permission of the OWNER.

3.4.3 A working dog performing such acts as herding or search and rescue that is under the control and supervision of the OWNER or handler shall not be considered as unleashed while performing or being trained for its duties. A hunting, obedience, tracking, or show dog that is under the control and supervision of the OWNER or handler shall not be considered as unleashed while performing in or being trained for those capacities.

3.4.4 A PERSON shall not, without the knowledge and consent of the OWNER, hold, HARBOR or retain possession of any ANIMAL for more than twenty-four (24) hours without first submitting a Found ANIMAL Report to an ANIMAL CONTROL OFFICER.

3.4.5 Found ANIMALS shall be immediately surrendered to an ANIMAL CONTROL OFFICER, upon request, and found ANIMALS shall be allowed to be scanned for a MICROCHIP and, when requested, presented for INSPECTION or identification to an ANIMAL CONTROL OFFICER and PERSON claiming OWNERSHIP of the ANIMAL.

### **Section 3.5 Animals Transported in Vehicles**

3.5.1 It is unlawful for a PERSON to carry an ANIMAL in or upon any vehicle in an unsafe manner.

3.5.2 If an ANIMAL CONTROL OFFICER determines that an ANIMAL in a closed vehicle is in immediate danger or SERIOUS INJURY or death, the officer may enter the vehicle, by whatever means necessary, and impound the ANIMAL into protective CUSTODY .

3.5.3 It shall be prima facie evidence on unsafe transportation if an ANIMAL is carried in open vehicle or truck bed on public roads with speed limits of 55 miles per hour or greater.

3.5.4 An ANIMAL in an open vehicle or truck must be restrained in such a manner that the ANIMAL cannot leave the confines of the open vehicle or truck bed while restrained.

### **Section 3.6 Breaking into Animal Control Facilities or Vehicles**

It is unlawful for a PERSON to break into any pound, center, facility or vehicle wherein

ANIMALs are impounded, or to in any manner remove or assist in the removal of any ANIMAL or equipment from such.

### **Section 3.7 Cruelty to Animals**

3.7.1 CRUELTY to ANIMALs is prohibited and consists of the placement of an ANIMAL in a circumstance that endangers or puts the ANIMAL at substantial risk of loss of life or limb. It also includes, but is not limited to, the following:

3.7.1.1 Negligently mistreating, torturing, injuring, tormenting, poisoning, mutilating or, without legal justification, killing any ANIMAL;

3.7.1.2 Voluntarily or involuntarily abandoning or failing to provide necessary sustenance to an ANIMAL;

3.7.1.3 Voluntarily or involuntarily depriving an ANIMAL of shelter to the extent it endangers or could cause suffering or endanger the life of said ANIMAL.

3.7.1.4 Voluntarily or involuntarily depriving an ANIMAL of necessary sustenance, food and/or drink or failing to meet minimum housing standards as set out herein; or

3.7.1.5 Placement of an ANIMAL in a vehicle or other confined area whereby it is subjected to extreme temperatures or conditions.

3.7.2 Extreme CRUELTY to ANIMALs is prohibited and consists of the intentional placement of an ANIMAL in a circumstance that endangers the ANIMAL and results at substantial risk of loss of life or limb. It also includes, but is not limited to, the following:

3.7.2.1 Intentionally, maliciously or with extreme disregard or mistreating, injuring, tormenting, torturing, poisoning or, without lawful justification, killing an ANIMAL; or

3.7.2.2 Maliciously killing or killing without lawful justification and ANIMAL.

3.7.3 CRUELTY and Extreme CRUELTY to ANIMALs does not consist of:

3.7.3.1 Lawful fishing, hunting, falconry, taking and trapping;

3.7.3.2 The lawful practice of veterinary medicine;

3.7.3.3 Lawful rodent or pest control that does not endanger wildlife or other ANIMALs;

3.7.3.4 The treatment of LIVESTOCK and other ANIMALs used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural ANIMAL husbandry practices;

3.7.3.5 The use of commonly accepted rodeo practices, unless otherwise prohibited by law;

3.7.3.6 Duly licensed research facilities, except when knowingly operating outside provisions, governing the treatment of ANIMALs, of a research or maintenance protocol approved by the institutional ANIMAL care and use committee of the facility;

3.7.3.7 A state-managed or authorized predator control program; or

3.7.3.8 Other similar activities not otherwise prohibited by law.

3.7.4 Disputes as to what constitutes commonly accepted agricultural ANIMAL husbandry practices or commonly accepted rodeo practices shall be determined by applicable statutes, rules and regulations or the New Mexico LIVESTOCK Board rules, regulations or determinations.

3.7.5 Prosecution of ANIMAL CRUELTY may be under this Ordinance and/or any applicable laws, rules and regulations.

3.7.6 Nothing contained in this Section shall apply to or prohibit the use of reasonable and necessary force to drive off or stop an ATTACK by a vicious, dangerous or trespassing ANIMAL.

### **Section 3.8 Vicious or Dangerous Animals**

3.8.1 It shall be unlawful to maintain, HARBOR or keep a vicious/dangerous ANIMAL or potentially vicious/dangerous ANIMAL in a manner that constitutes a threat to any PERSON or other ANIMAL. All vicious/dangerous ANIMALs must be securely confined in escape-proof locked structures and the OWNER must post warning signs warning people to remain a safe distance from said ANIMALs. Any PERSON ATTACKed by a vicious/dangerous ANIMAL may use reasonable force to repel the ATTACK. Any ANIMAL CONTROL OFFICER who determines that the present conditions of CONFINEMENT for a vicious/dangerous ANIMAL do not meet the above standards and that a present substantial danger to the public exists may, consistent with the constitutional rights of the OWNER, take control of said ANIMAL and confine it, pending further Court action.

3.8.2 When an ANIMAL CONTROL OFFICER has probable cause to believe that an ANIMAL is vicious/dangerous or potentially vicious/dangerous, the ANIMAL CONTROL OFFICER may, consistent with the constitutional rights of the OWNER, impound the ANIMAL into protective CUSTODY awaiting appropriate court proceedings. Following judicial determination that an ANIMAL is vicious/dangerous, the court having jurisdiction over the enforcement of this ordinance, shall, in addition to any fine or imprisonment imposed for violation of this section, order the OWNER or keeper of such vicious ANIMAL to destroy it humanely or turn such ANIMAL over for destruction.

3.8.3 An ANIMAL CONTROL OFFICER who learns of a STRAY vicious/dangerous ANIMAL within the COUNTY, which is a threat or potential threat to human life, is authorized to destroy said STRAY vicious/dangerous ANIMAL if he is unable to capture said ANIMALs without any substantial danger to himself or others.

3.8.4 A Vicious/Dangerous ANIMAL means any of the following:

3.8.4.1 Any ANIMAL that, without provocation, ATTACKs, BITEs or physically injures kills or seriously injures a PERSON or other ANIMAL;

3.8.4.2 An ANIMAL, which engages in behavior that reasonably requires a defensive action by a PERSON to prevent bodily injury to a PERSON;

3.8.4.3 A snake, which, because of its poisonous BITE, is a significant hazard to the public;

3.8.4.5 Any ANIMAL known to be vicious and is deemed liable to ATTACK or injure any PERSON or other ANIMAL;

3.8.4.6 Any ANIMAL which at any time without provocation shall BITE, ATTACK or injure any PERSON who was peacefully conducting himself where he lawfully may be.

3.8.5 A Potentially Vicious/Dangerous ANIMAL means an ANIMAL:

3.8.5.1 That may be reasonably assumed to pose a threat to public safety by a pattern of behavior;

3.8.5.2 Has prior incidents of history of causing an injury to a PERSON or ANIMAL that is less severe than a SERIOUS INJURY;

3.8.5.3 That chases or menaces a PERSON or DOMESTIC ANIMAL in an aggressive manner and without provocation; or

3.8.5.4 That by acting in a highly aggressive manner within a fenced yard or ENCLOSURE and appearing able to jump out of the yard or ENCLOSURE .

3.8.6 A Dangerous ANIMAL shall not mean:

3.8.6.1 A dog used by a law enforcement official for legitimate law enforcement purposes;

3.8.6.2 If the threat, injury or damage was sustained by a PERSON or DOMESTIC ANIMAL who was trespassing upon PREMISES occupied by the OWNER or the dog;

3.8.6.3 If the ANIMAL was provoked, tormented, abused or assaulting the dog or had repeatedly, in the past, provoked, tormented, abused or assaulted the dog;

3.8.6.4 The victim was injured or ATTACKED while committing or attempting to commit a crime; or

3.8.6.5 The ANIMAL was responding to fear, pain or injury, protecting itself or its offspring; or protecting or defending a human being or DOMESTIC ANIMAL from ATTACK or assault.

### **Section 3.9 Unlawful Use of VACCINATION Certificates**

No PERSON may remove any VACCINATION tag from one DOMESTIC ANIMAL to another, or manufacture or cause to be manufactured or to possess or control a stolen, counterfeit or forged ANIMAL VACCINATION certificate or tag.

### **Section 3.10 Use and Safety of Fireworks**

No PERSON shall ignite any aerial device firework so that any part of that aerial device firework or the sparks or flames from that aerial device firework comes within fifty feet of any DOMESTIC ANIMAL or LIVESTOCK belonging to another PERSON.

### **Section 3.11 Restrictions on Sale or Transfer of Ownership**

3.11.1 The sale, offer to sell, permanent transfer or ADOPTION of ANIMALs under the age of eight (8) weeks is prohibited and ANIMALs over the age of eight (8) weeks is prohibited until the ANIMAL has been weaned and capable of eating on its own to sufficiently maintain proper body condition as determined by an ANIMAL CONTROL OFFICER unless accompanied by a nursing female.

3.11.2 Prior to the sale or permanent transfer of any ANIMAL outside the boundaries of LUNA COUNTY, a letter or certification of health from a VETERINARIAN must be obtained which evaluates the physical condition and fitness for travel and verifies the absence of communicable or infectious diseases, such as rabies, parvo, distemper, etc. ANIMALs infected with communicable or infectious diseases shall not be transferred and are subject to the QUARANTINE or ISOLATION provisions of this Ordinance.

3.11.3 The sale, offer for sale, barter, give away, ADOPTION or other transfer upon a street, sidewalk, public park or any area open to the public is prohibited unless conducted by or behalf of the COUNTY ANIMAL SHELTER or without a Special Animal Event PERMIT.

3.11.4 The offer of an ANIMAL as a prize, giveaway, premium, novelty, award or reward for a contest, game or sport or as an incentive to purchase merchandise is prohibited unless done in conjunction with FFA, 4-H or other RECOGNIZED ANIMAL humane organization and approved, in advance, by the COUNTY or its designee.

3.11.5 Other than accurately labeled and identified fish, the sale, offer for sale, or other



transfer of venomous ANIMALs is prohibited.

3.11.6 Nothing herein shall prohibit the sale, transfer or ADOPTION by, between, or among ANIMAL SHELTERS, ANIMAL RESCUES, and/or ANIMAL SANCTUARY OR REFUGE facilities.

## **ARTICLE IV EXOTIC ANIMALS**

### **Section 4.1 Exotic Animals**

Except for municipal zoos and aquarium facilities, veterinary facilities, or individuals holding a State of New Mexico Wildlife Rehabilitation or Educational Use Permit, the possession of EXOTIC ANIMALs is prohibited.

## **ARTICLE V PERMITS, AGREEMENTS AND FEES REQUIRED**

### **Section 5.1 Permits**

LUNA COUNTY requires the following INSPECTIONS, permits, licenses, and SPECIAL ANIMAL PERMITS conducted or issued by the LUNA COUNTY Code Enforcement Office on Applications prepared by an applicant in cooperation with the LUNA COUNTY Code Enforcement Office. Applications are available at their office and online at the LUNA COUNTY website.

5.1.1 DOMESTIC ANIMAL License All domestic dogs and cats kept as pets must be registered bi-annually.

5.1.2 All permitted facilities shall be inspected based on the total capacity for the facility as follows:

5.1.2.1 8 to 20 ANIMALs – at least once each 12 months;

5.1.2.2 21 - 40 ANIMALs – at least once every 6 months;

5.1.2.3 41 -60 ANIMALs – at least once every 3 months; and

5.1.2.3 61 or more ANIMALs – at least once each month.

5.1.3 Except temporarily in a RECOGNIZED emergency, as determined by LUNA COUNTY or its designee, no facility of any kind may hold, contain or possess more than **80** ANIMALs.

5.1.4 ANIMAL RESCUE Facility PERMITs allow any licensed or permitted PERSON or non-profit organization RECOGNIZED as an ANIMAL humane organization, or a member thereof, to take temporary CUSTODY of or care for the licensed number of ANIMALs until suitable permanent housing or placement is found. All facilities operated as an ANIMAL RESCUE must be registered and permitted annually and inspected at least annually.

5.1.5 ANIMAL SHELTER Facility PERMITs allow any licensed or any permitted non-profit ANIMAL humane entity not established or authorized by a municipality or county of the State of New Mexico to temporarily take CUSTODY of or care for the licensed number of ANIMALs until a permanent placement or DISPOSITION is found. All facilities operated as an ANIMAL SHELTER must be registered, permitted annually and inspected at least annually.

5.1.6 ANIMAL SANCTUARY OR REFUGE Facility PERMITs allow any licensed or permitted PERSON or non-profit organization RECOGNIZED as an ANIMAL humane organization, or member thereof, to take permanent or indefinite CUSTODY of and care for ANIMALs not suitable for placement elsewhere. All facilities operated as an ANIMAL SANCTUARY OR REFUGE must be registered and permitted annually and inspected at least annually.

5.1.7 BREEDING FACILITY PERMITs, allow any licensed or permitted PERSON or non-



profit organization RECOGNIZED as an ANIMAL humane organization, or member thereof, to house up to eight (8) female dogs and eight (8) female cats for the purpose of breeding and producing offspring with the intent to sell, gift or otherwise transfer OWNERSHIP to third parties. All facilities operated as Breeding Facilities must be registered and permitted annually and inspected at least quarterly. Additionally, all litters must be reported within seventy-two (72) hours and inspected within fifteen (15) days. Breeding Facilities and BREEDERS may not operate as an ANIMAL RESCUE, ANIMAL SHELTER, ANIMAL SANCTUARY OR REFUGE, KENNEL, or other MULTIPLE ANIMAL FACILITY.

5.1.7.1 INTACT ANIMAL PERMITS allow for a RESPONSIBLE PERSON to keep an ANIMAL intact for the calendar year in which the PERMIT is issued. INTACT ANIMAL PERMITS must be registered and permitted annually.

5.1.8 Groomer or Grooming Parlor PERMITS allow for a PERSON or organization to take temporary CUSTODY of up to twenty (20) ANIMALS for the purpose of performing cosmetic services for ANIMALS including, but not limited to, bathing, brushing, grooming and nail trimming, for up to seventy-two (72) hours. Groomer or Grooming Parlor PERMITS must be registered and permitted annually and inspected at least annually.

5.1.9 KENNEL PERMITS, whether commercial or residential, allow for a PERSON or organization to take temporary CUSTODY of the licensed number of ANIMALS for the purpose of boarding, caring for, grooming, training or selling said ANIMALS but not breeding. A Residential KENNEL may be licensed for up to eight (8) ANIMALS. A Commercial KENNEL may be licensed for nine (9) or more ANIMALS. KENNEL PERMITS must be registered and permitted annually and inspected at least annually.

5.1.10 MULTIPLE ANIMAL FACILITY PERMITS allow for a PERSON or non-profit organization RECOGNIZED as an ANIMAL humane organization, or member thereof, for a purpose not otherwise specified herein, such as foster-care, to take temporary CUSTODY of up to nine (9) ANIMALS at any one time. MULTIPLE ANIMAL FACILITY PERMITS must be registered and permitted annually and inspected at least annually.

5.1.11 PET SHOP PERMITS allow for a PERSON or organization to operate a business physical or online, open to the public, for the purpose of purchasing, selling or exchanging ANIMALS. PERMITS shall specify the number of each type of ANIMAL to be held at the facility. PET SHOP PERMITS must be registered and permitted annually and inspected at least annually.

5.1.12 SPECIAL ANIMAL PERMITS allow for operations or purposes not otherwise specified in this Ordinance, such as ANIMAL transport and SERVICE ANIMALS. SPECIAL ANIMAL PERMITS must be registered and permitted annually.

5.1.13 Special ANIMAL Event PERMITS allow for a RECOGNIZED non-profit or charitable organization formed for the purpose of advancing the humane and ethical treatment of ANIMALS to hold special events promoting the same, such as ADOPTION fairs and events promoting foster care, spay, neutering, micro-chipping, etc. Special ANIMAL Event PERMITS must be registered and are permitted on an individual (one-time) basis.

## **Section 5.2 Agreements**

5.2 The COUNTY ANIMAL SHELTER shall not release any DOMESTIC ANIMAL for RECLAIM, ADOPTION, or RESCUE unless the OWNER or RESPONSIBLE PERSON signs a **Reclaim, Adoption and Rescue Agreement**, the form of which shall be approved by the COUNTY MANAGER, or his designee. At a minimum, the Agreement shall:

5.2.1 Obligate the RECLAIMING/adopting/rescuing PERSON to vaccinate any ANIMAL not proven to be vaccinated for rabies within thirty (30)

days of possession and provide proof to the COUNTY ANIMAL SHELTER or be subject to automatic forfeiture of the ANIMAL; and

5.2.2 Obligate the RECLAIMing/adopting/rescuing PERSON to have a DOMESTIC ANIMAL older than 6 months of age STERILIZED or that PERSON obtain an INTACT ANIMAL PERMIT for the ANIMAL and have the Intact ANIMAL micro-chipped within thirty (30) days of the date of RECLAIM/ADOPTION/RESCUE .

### **Section 5.3 Fees**

Fees for licenses, PERMITs and as required pursuant to this ordinance shall be established and adopted annually through resolution by the Board of County Commissioners.

## **ARTICLE VI ANIMAL CONTROL OFFICER; AUTHORITY, RESPONSIBILITIES AND IMPOUNDMENT PROCEDURES**

### **Section 6.1 Authority of the Animal Control Officer**

ANIMAL CONTROL OFFICERs will be properly trained and, within one (1) year of employment, obtain basic or level one ANIMAL CONTROL OFFICER certification and subject to constitutional limitations, shall have the following authority:

6.1.1 To require RESPONSIBLE PERSONs to exhibit proof of rabies VACCINATION for any dog, cat or domestic ferret in their CUSTODY .

6.1.2 To enter upon private property to affix any summons, notice or official document upon the door of any residence occupied by a RESPONSIBLE PERSON.

6.1.3 To enter upon any PREMISES or go upon UNENCLOSED parcels of land enter any pen, ENCLOSURE , yard or vehicle to enforce this Ordinance. However, the Officer must personally view any violation proscribed by this Ordinance that would place a DOMESTIC ANIMAL in immediate peril. Further, the Officer may enter only to the extent necessary for the immediate RESCUE of an imperiled ANIMAL.

6.1.4 To enter upon any licensed or permitted PREMISES for the purpose of conducting an INSPECTION required under this Ordinance, or in response to any COMPLAINT of ANIMAL CRUELTY or mistreat.

6.1.5 ANIMAL CONTROL OFFICERs may not enter any building, dwelling or place of business without the permission of the OWNER. However, nothing in this section limits the authority of an ANIMAL CONTROL OFFICER pursuant to a warrant issued by a court of competent jurisdiction.

### **Section 6.2 Responsibilities of the Animal Control Officer**

6.2.1 ANIMAL CONTROL OFFICER shall make every attempt to impound any DOMESTIC ANIMAL that he or she finds running astray and not under the control of the OWNER or RESPONSIBLE PERSON.

6.2.2 ANIMAL CONTROL OFFICER shall destroy any dog he or she finds in the act of pursuing or wounding LIVESTOCK or wounding and killing POULTRY or ATTACKing humans.

6.2.3 ANIMAL CONTROL OFFICER shall detain any DOMESTIC ANIMAL exhibiting symptoms of rabies. The ANIMAL CONTROL OFFICER shall have any such ANIMAL tested for rabies by the New Mexico Department of Health.

6.2.4 Must obtain proper training for duties and responsibilities required as an ANIMAL

CONTROL OFFICER to apprehend, handle and care for ANIMALs.

### **Section 6.3 Impounding Animals**

6.3.1 An ANIMAL Control Officer may detain and impound in the designated ANIMAL control facility a STRAY or any ANIMAL kept or maintained contrary to the requirements of this ordinance.

6.3.2 If a STRAY, DOMESTIC ANIMAL is wearing a license, collar, anti-rabies tag, has an identifying tattoo, MICROCHIP or is otherwise identifiable, the ANIMAL may be either immediately returned to the OWNER or impounded for at least five (5) days. During the five (5) days of IMPOUNDMENT, the ANIMAL SHELTER shall attempt, at least once daily, to notify the ANIMAL's OWNER(s) or RESPONSIBLE PERSON(s) of the IMPOUNDMENT by either direct communication or oral or written message. Further, the ANIMAL SHELTER shall not release the ANIMAL for ADOPTION during the five days of IMPOUNDMENT.

6.3.3 If an OWNER or RESPONSIBLE PERSON contacts the ANIMAL SHELTER before expiration of the IMPOUNDMENT period, but cannot arrange to RECLAIM the ANIMAL before the IMPOUNDMENT period expires, the ANIMAL SHELTER shall assist the OWNER or RESPONSIBLE PERSON in making alternative arrangements, at the OWNER or RESPONSIBLE PERSON's expense.

6.3.4 The OWNER or RESPONSIBLE PERSON shall be responsible for all impound fees, boarding fees, and other costs whether or not the ANIMAL is RECLAIMed.

6.3.5 Any STRAY which is not RECLAIMed and cannot be adopted, may be euthanized in accordance with the impound facility's regulations.

6.3.6 The ANIMAL may be confined in accordance with the facilities regulations.

6.3.7 The Director of such facility shall maintain, as required by statute, a record of all ANIMALs impounded. At least the following information shall be included:

6.3.7.1 A complete description of the ANIMAL and photo;

6.3.7.2 The manner, date and location of its acquisition;

6.3.7.3 The date, manner, and place of IMPOUNDMENT;

6.3.7.4 The IMPOUNDMENT number; and

6.3.7.5 The date and manner of DISPOSITION of said ANIMAL.

6.3.8 OWNERS requesting surrender of an ANIMAL shall be required to sign an OWNER's release at the time of IMPOUNDMENT.

6.3.9 If a STRAY ANIMAL is not wearing a current rabies tag and is deemed critically injured or critically ill by an ANIMAL CONTROL OFFICER, the officer may deliver the ANIMAL to the LUNA COUNTY Humane Society for EUTHANASIA. A report must be filed with the **SHERIFF**. A properly trained and equipped ANIMAL CONTROL OFFICER may euthanize said ANIMAL if he/she believes it is necessary.

6.3.10 Whenever an ANIMAL CONTROL OFFICER finds that any ANIMAL is or will be without adequate care because of injury, illness, incarceration or other absence of the OWNER or PERSON responsible for the care of such ANIMAL, the **SHERIFF** or his designee may take up such ANIMAL for protective care. The OWNER of the ANIMAL may RECLAIM the ANIMAL after paying all required fees and costs imposed by the impound facility. If the ANIMAL is unclaimed at the end of the protective CUSTODY period fifteen (15) days, the ANIMAL may be humanely destroyed or otherwise disposed of by impound facility.



6.3.11 The OWNER of any impounded dog or cat that has not been vaccinated as required by this chapter may redeem the ANIMAL by paying IMPOUNDMENT charges at the COUNTY ANIMAL SHELTER and having the ANIMAL vaccinated within thirty (30) days with proof provided thereafter to the COUNTY ANIMAL SHELTER. If such OWNER fails to comply with this section, the ANIMAL may be impounded and subject to forfeiture.

## **ARTICLE VII ADMINISTRATION**

### **Section 7.1 Procedures for Complaints**

7.1.1 A COMPLAINT alleging any violation of this ordinance shall be filed with the **SHERIFF** and the CONTRACTOR of the ANIMAL SHELTER by a PERSON who has personal knowledge of such violation and who can identify the OWNER of the ANIMAL involved or the PREMISES where the ANIMAL is located.

7.1.2 The Complainant must include his/her name, address, phone number and e-mail account with the COMPLAINT .

7.1.3 ANIMAL CONTROL OFFICER must include all findings in the investigation report narrative and submit a copy to the COUNTY MANAGER or his designee.

### **Section 7.2 Procedure for Sheriff and Animal Control Officers**

7.2.1 The **SHERIFF** or his deputies and ANIMAL CONTROL OFFICERS shall have the authority to and are directed to investigate, upon probable cause, any alleged violation of this Ordinance or of any law of the State of New Mexico relating to the care, treatment, control and prevention of CRUELTY to ANIMALS. The results of all investigations shall be presented to the **SHERIFF** and referred to the District Attorney for determination of further action.

7.2.2 An ANIMAL CONTROL OFFICER shall wear a uniform and shall carry appropriate identification when on duty.

7.2.3 In enforcing this ordinance, the COUNTY's personnel shall observe all of the legal rights granted its citizens under United States or New Mexico law, including citizens' constitutional rights against unreasonable searches and seizures. All such searches and seizures shall be conducted in such a manner as to protect the citizens' rights under the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. These protections require that the officer have consent of the PERSON, or a warrant to enter upon private property or that such entry be in accordance with a RECOGNIZED exception to the warrant requirement, per existing Federal or NM State law. If an officer receives a COMPLAINT of a violation, or observes a violation, he/she may only enter the property if such entries done in conformance with the above constitutional requirements. Where legally RECOGNIZED exigent circumstances exist, per existing Federal or NM State law, to justify such an entry and a warrant cannot reasonably be obtained by the officer, he/she can enter the PREMISES to the extent justified by law. For example, exigent circumstances exist where an ANIMAL appears to have been abandoned, as defined in this ordinance, and the officer reasonably believes it is necessary to protect the life and safety of the ANIMAL; the officer may enter the property to detain the ANIMAL.

7.2.4 Whenever a Deputy or an ANIMAL CONTROL OFFICER has probable cause to believe that a PERSON has violated this Ordinance or applicable state laws, the ANIMAL CONTROL OFFICER shall prepare a criminal COMPLAINT to be submitted to the **SHERIFF** and referred to the District Attorney for filing with the appropriate court or prepare a citation for the alleged violator to appear in court. The citation shall contain the name, date of

birth, address and telephone number, if known, of the PERSON violating this chapter, the driver's license number of such violator, if known, the code section allegedly violated, and the date and place when and where such PERSON allegedly committed the violation, and the location where such PERSON shall appear in court and the deadline for appearance. The ANIMAL CONTROL OFFICER shall present the citation to the PERSON he has probable cause to believe violated the code section in order to secure the alleged violator's written promise to appear in court by having the alleged violator sign a copy of the citation. The ANIMAL CONTROL OFFICER shall deliver a copy of the citation to the PERSON promising to appear.

## **ARTICLE VIII                      PENALTIES**

### **Section 8.1      Penalties-Repeat Offenses**

Any violation of this Ordinance shall constitute a petty misdemeanor and shall be punishable by a fine up to five hundred dollars (\$500) and/or imprisonment up to six months or both.

### **Section 8.2      Suspensions, Revocations of Permits.**

8.2.1 When a violation of this Ordinance is discovered, the **SHERIFF** or his designee shall give notice of the violations to the PERMIT holder, operator or PERSON in charge. The notification shall:

8.2.1.1 Set forth each specific violation.

8.2.1.2 Established a specific and reasonable period of time for the correction of the violation.

8.2.1.3 State that failure to comply with a notice issued in accordance with the provisions of this chapter may result in immediate suspension or revocation of the PERMIT.

8.2.1.4 State that an opportunity for appeal from a notice or INSPECTION findings will be provided if a written request for a hearing is filed with the Supervisor within 5 days of receipt of the notice.

8.2.2 Notices under this section shall be deemed properly served and received when the original INSPECTION report or other notice has been personally served on the PERSON in charge, or sent by registered or certified mail to the last known address of the PERMIT holder.

8.2.3 PERMITs may be suspended for failure of the holder to comply with the requirements of this chapter or other applicable laws, ordinances or regulations. The suspension may be lifted when the Supervisor determines the violations have been corrected.

8.2.4 PERMITs may be revoked for serious or repeated violations of the requirements of this chapter, or for violation of other applicable laws, ordinances or regulations. A PERMIT shall be revoked for one year. The PERMIT shall be surrendered to the ANIMAL Control Unit upon suspension or revocation.

8.2.5 A PERSON whose PERMIT has been suspended may apply for an INSPECTION of the PREMISES for the purpose of reinstating the PERMIT. If the applicant and the site are in compliance with the requirements of this chapter and all other applicable laws, ordinances and regulations, the PERMIT shall be reinstated. The reinstated PERMIT shall expire on the date of expiration of the previously suspended PERMIT.

8.2.6 If an EXOTIC, WILD ANIMAL or canine/wolf hybrid PERMIT is suspended or revoked, all ANIMALs received, purchased, owned or kept under the authority of the PERMIT shall be surrendered to the **SHERIFF** or his designee for IMPOUNDMENT and destruction. After a period of at least seven days, if the violations of this chapter that resulted in



suspension or revocation of the PERMIT has not been corrected, the Supervisor may sell or dispose of the ANIMAL (s) as provided in this chapter. The applicant may appeal the suspension or revocation in the manner provided in section 8-3 of this chapter.

### **Section 8.3 Appeal Procedures for Permit Denial, Suspension or Revocation**

8.3.1 A PERSON whose application for a PERMIT or PERMIT renewal has been approved on condition or denied and a PERMIT holder, whose PERMIT has been suspended or revoked, may submit to the COUNTY ANIMAL SHELTER a written request for a hearing. The written request must be received within ten days of the applicant's receipt of the written notice from the COUNTY. The hearing shall be conducted within a reasonable time after the COUNTY ANIMAL SHELTER receives the request for a hearing.

8.3.2 Hearings shall be conducted by a hearing officer at a time and place designated by the COUNTY ANIMAL SHELTER and shall be recorded. All witnesses shall be sworn or affirmed. Written notice of the time and place of the hearing shall be mailed to the applicant and the COUNTY MANAGER.

8.3.3 The applicant shall be afforded a fair hearing that provides the basic safeguards of due process that shall include:

8.3.4 The opportunity to examine before the hearing and, at the expense of the applicant, to copy all documents, records and regulations of the ANIMAL control department that are relevant to the hearing. Any document not made available by the ANIMAL control department, after written request by the applicant, may not be relied upon by the ANIMAL control department at the hearing.

8.3.5 The right to be represented by counsel or other PERSONs chosen as his representative.

8.3.6 The right to present evidence and arguments in support of his appeal to controvert evidence relied on by the department, and to confront and cross-examine all witnesses on whose testimony or information the COUNTY MANAGER relies.

8.3.7 A decision based solely and exclusively upon the facts presented at the hearing.

8.3.8 The hearing officer shall prepare a written report of his findings and decision within ten days after the hearing and shall provide copies to the parties.

## **ARTICLE IX REPEAL AND SEVERABILITY CLAUSE**

### **Section 9.1 Repeal of Prior Ordinances and Effective Date**

All other ordinances of this COUNTY pertaining to ANIMAL control and specifically Ordinances 1, 33, and 52 are hereby repealed by the adoption of this Ordinance. Additionally, if any part of this Ordinance is held to be invalid, such shall be deemed severed and shall not void any remaining sections of this Ordinance.

### **Section 9.2 Severability**

If any section, paragraph, sentence, clause, word or phrase of this chapter is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this chapter. The commission hereby declares that it would have passed this chapter and each division, section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

## **ARTICLE X ENFORCEMENT**

The **SHERIFF** of LUNA COUNTY, or his designee, LUNA COUNTY Code Enforcement Officers and ANIMAL CONTROL OFFICERS shall be responsible for the enforcement of this Ordinance. The **SHERIFF** shall have the discretion to name a designee and describe the duties of said designee in accordance with New Mexico law and LUNA COUNTY Ordinances and policies.

APPROVED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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

**ATTEST:**

\_\_\_\_\_  
**Andrea Rodriguez, County Clerk  
(Seal)**

\_\_\_\_\_  
**Linda Smrkovsky, Chairman**

\_\_\_\_\_  
**Barbara Reedy, Commissioner**

\_\_\_\_\_  
**John Sweetser, Commissioner**

LCBCC Meeting October 10<sup>th</sup>, 2019

Accounts Payable

9/5/2019	\$142,150.10
9/5/2019	\$16,469.35
9/5/2019	\$6,148.26
9/13/2019	\$224,109.68
9/13/2019	\$23,333.69
9/13/2019	\$5,837.00
9/19/2019	\$478,661.36
9/19/2019	\$8,650.92
9/19/2019	\$5,863.15
9/26/2019	\$18,918.06
9/26/2019	\$6,117.86
9/26/2019	\$3,368.22

P-Cards

August 2019	\$158,404.54
-------------	--------------

Total    \$1,098,032.19

*Luna County*  
*Board of County Commissioners*

**AGENDA 10/10/2019**

**PAYROLL**

09/05/2019	*Register # 20190113	\$277.77
09/13/2019	Register # 20190115	\$553,681.63
09/13/2019	*Register # 20190116	\$35,821.12
09/13/2019	*Register # 20190117	\$1,925.18
09/13/2019	*Register # 20190118	\$1,024.92
09/27/2019	Register # 20190119	\$535,424.11
09/27/2019	*Register # 20190120	\$20,671.86
09/27/2019	*Register # 20190121	\$2,616.10
09/27/2019	*Register # 20190122	\$3,343.03


**Total \$1,154,785.72**

\* Special

APPOINTMENT OF Court Security Officer  
STATE OF NEW MEXICO )  
COUNTY OF LUNA ) ss

This is to certify that I have this 23<sup>rd</sup> day of September, 2019  
A.D. appointed Garret Gigante as  
my Court Security Officer in and for the County of Luna, State of New  
Mexico, hereby authorizing him to discharge all duties of said appointment  
of Court Security Officer, according to the law.

WITNESS MY HAND THIS 23<sup>rd</sup> DAY OF September, 2019 A.D.

  
SHERIFF, LUNA COUNTY NEW MEXICO

OATH OF OFFICE

STATE OF NEW MEXICO )  
COUNTY OF LUNA ) ss

I, Garret Gigante, having received the above  
appointment as Court Security Officer in and for the County of  
Luna, State of New Mexico, do solemnly swear that I will support the Constitution  
of the United States, and also the Constitution of the State of New Mexico, and that  
I will faithfully, impartially, and to the best of my ability discharge all the duties of  
said office and appointment.

  
SIGNATURE OF APPOINTEE

STATE OF NEW MEXICO  
COUNTY OF LUNA

Subscribed and sworn before me by Kelly Gannaway,  
Sheriff and Garret Gigante appointee.  
This 23<sup>rd</sup> day of September, 2019.



NOTARY

My Commission Expires 03-03-2023

Approved this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ A.D., by the Board of County Commissioners,  
Luna County, New Mexico.

\_\_\_\_\_  
CHAIRMAN, BOARD OF LUNA COUNTY COMMISSIONERS



# **LUNA COUNTY BOARD OF COUNTY COMMISSIONERS**

## **RESOLUTION NO. 19-51 Proposed Inter/Intra Fund Budget Increases**

**WHEREAS**, the Luna County Board of County Commissioners has the statutory authority to approve, modify and amend the County's annual operating budget; and

**WHEREAS**, development of an annual budget includes a considerable amount of professional guessing about events that may occur in the future; and

**WHEREAS**, during the course of the budget year actual events can result in receiving revenues or making expenditures that were not expected at the time the budget was prepared and adopted; and

**WHEREAS**, it is necessary to adjust the County's adopted budget to properly provide for these unexpected events.

**NOW THEREFORE BE IT RESOLVED** that the Luna County Board of County Commissioners hereby adopts the changes to the County's Fiscal Year 108, July 1, 2019 through June 30, 2020 Budget proposed by the County's management staff and attached hereto in spreadsheet form, as amendments to the previously adopted operating budget.

**PASSED, APPROVED AND ADOPTED THIS 10<sup>th</sup> DAY OF OCTOBER, 2019.**

LUNA COUNTY

---

Chairperson

ATTEST:

---

Andrea Rodriguez, Luna County Clerk

Be it remembered that at a Special meeting of the Luna County Board of County Commissioners in Deming NM on the 10th day of October, 2019, the following budget adjustments are proposed and entered of record.

SCHEDULE OF BUDGET ADJUSTMENTS				Budget Resolution Number 19-51 Proposed Inter/Intra FUND Budget Increase					Entity Code DFA Resolution Number	
ITEM NO	Adjustment Type	Fund/ DFA Fund	Dept.	From	Amount	To	Amount	Purpose	Approved Budget Balance	Adjusted Budget Balance
One	Increase	401/11000	General Fund - Election Bureau	401/11000	\$ (970.04)	401-77-1262 Reimbursements to County	\$ (970.04)	Reimbursement from Secretary of State for attending Election School	\$ -	\$ (970.04)
					\$ 970.04	401-05-2010 Mileage/Per Diem	\$ 970.04	To allow for spending of reimbursement from Secretary of State for attending Election School	\$ 3,760.20	\$ 4,730.24
Two	Increase	609/22600	Adult Detention	609/22600	\$ 262,100.00	609-21-2005 Salaries - Overtime	\$ 25,000.00	To allow for expenditure through remainder of fiscal year. Carryover encumbrances were not added into final budget.	\$ 75,000.00	\$ 100,000.00
						609-21-2006 Postage	\$ 100.00	To allow for expenditure through remainder of fiscal year. Carryover encumbrances were not added into final budget.	\$ 500.00	\$ 600.00
						609-21-2018 Inmate Medical	\$ 50,000.00	To allow for expenditure through remainder of fiscal year. Carryover encumbrances were not added into final budget.	\$ 788,816.87	\$ 838,816.87
						609-21-2022 Building Repairs	\$ 10,000.00	To allow for expenditure through remainder of fiscal year. Carryover encumbrances were not added into final budget.	\$ 15,000.00	\$ 25,000.00
						609-21-2038 Inmate Meals	\$ 125,000.00	To allow for expenditure through remainder of fiscal year. Carryover encumbrances were not added into final budget.	\$ 671,214.87	\$ 796,214.87
						609-21-2101 Professional/Contract Services	\$ 50,000.00	To allow for expenditure through remainder of fiscal year. Carryover encumbrances were not added into final budget.	\$ 80,000.00	\$ 130,000.00
						609-21-2174 Pre-Employment Physicals	\$ 2,000.00	To allow for expenditure through remainder of fiscal year. Carryover encumbrances were not added into final budget.	\$ 4,000.00	\$ 6,000.00
					\$ 262,100.00		\$ 262,100.00		\$ 1,638,291.94	\$ 1,900,391.94

NOW, THEREFORE, it is respectfully requested that the Luna County Commissioners, authorize the above adjustments to the Luna County Budget.

Done at Deming New Mexico this Thursday the 10th day of October, 2019.

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS

Barbara L. Reedy, District 1

Linda M. Smrkovsky, District 2

John S. Sweetser, District 3



ATTEST

Entered By:

Date

Andrea Rodriguez, Luna County Clerk

Checked By:

Date

**LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS**

**RESOLUTION NO. 19-52  
Proposed Intra/Inter Department Transfers**

**WHEREAS**, the Luna County Board of County Commissioners has the statutory authority to approve, modify and amend the County's annual operating budget; and

**WHEREAS**, development of an annual budget includes a considerable amount of professional guessing about events that may occur in the future; and

**WHEREAS**, during the course of the budget year actual events can result in receiving revenues or making expenditures that were not expected at the time the budget was prepared and adopted; and

**WHEREAS**, it is necessary to adjust the County's adopted budget to properly provide for these unexpected events.

**NOW THEREFORE BE IT RESOLVED** that the Luna County Board of County Commissioners hereby adopts the changes to the County's Fiscal Year 108, July 1, 2019 through June 30, 2020 Budget proposed by the County's management staff and attached hereto in spreadsheet form, as amendments to the previously adopted operating budget.

**PASSED, APPROVED AND ADOPTED THIS 10<sup>th</sup> DAY OF OCTOBER, 2019.**

LUNA COUNTY

---

Chairperson

ATTEST:

---

Andrea Rodriguez, Luna County Clerk

Be it remembered that at a Regular meeting of the Luna County Board of County Commissioners in Deming NM on the 10th day of October, 2019 the following budget adjustments are proposed and entered of record.

## Budget Resolution Number 19-52

Proposed Intra/Inter Department Transfer

ITEM NO	Adjustment Type	Fund/ DFA Fund	Dept.	From	FROM Current Balance	Transfer amount	TO Line Number	Transfer Amount	Purpose
One	Transfer	801/59900	Entertainment Complex	801-80-2108 Film Rental Payments	\$154,624.08	\$1,500.00	801-80-2083 INS - Unemployment	\$1,500.00	To cover the cost of our unemployment obligation for this fiscal year.
Two	Transfer	415/21800	Community Services Teen Outreach Program	415-39-2003 Salaries - Part-Time	\$16,119.24	\$16,119.24	415-39-2101 Professional/Contract Services	\$16,119.24	To pay for contract services through remainder of fiscal year.
				415-39-2060 Match - Medicare 1.45%	\$327.24	\$260.35	415-39-2101 Professional/Contract Services	\$260.35	To pay for contract services through remainder of fiscal year.
				415-39-2064 Match - FICA 6.2%	\$1,399.42	\$1,113.22	415-39-2101 Professional/Contract Services	\$1,113.22	To pay for contract services through remainder of fiscal year.
					\$172,469.98	\$18,992.81		\$18,992.81	

NOW, THEREFORE, it is respectfully requested that the Luna County Commissioners, authorize the above adjustments to the Luna County Budget.

Done at Deming New Mexico this **Thursday the 10th day of October, 2019.**

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS

Barbara L. Reedy, District 1

Linda M. Smrkovsky, District 2

John S. Sweetser, District 3



ATTEST:

Entered By:

Date

Andrea Rodriguez, Luna County Clerk

Checked By:

Date



**Proclamation of Recognition**  
**Domestic Violence Awareness Month**  
**October 2019**



**Whereas**, anyone can be a victim of domestic violence regardless of age, sex, ability, ethnicity, sexual orientation, socioeconomic status, or religion; and

**Whereas**, children that grow up in a violent home are believed to be abused and neglected at a rate higher than the national average, and that these children, their development and ability to function well in school can be negatively impacted for a lifetime; and

**Whereas**, Domestic Violence Awareness Month provides an excellent opportunity for citizens to learn more about preventing domestic violence and to show support for the numerous organizations and individuals who provide critical advocacy, services and assistance to victims; and

**Whereas**, Domestic Violence Awareness Month provides an excellent opportunity to reach victims and provide critical information on how they can seek help and support; and

**Therefore**, let it be proclaimed on behalf of all members of the Luna County Commissioners Board, Staff and the Residents of Luna County, the month of October as Domestic Violence Awareness Month in the County of Luna, and urge residents to work together to eliminate domestic violence from our community.

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David McSherry, Luna County Manager

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Barbara Reedy, Commissioner, District 1

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Linda Smirkovsky, Chair, District 2

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John S. Sweetser, Commissioner, District 3

\$972,550  
LUNA COUNTY, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY  
Loan No. PPRF-5005

TRANSCRIPT OF PROCEEDINGS  
INDEX

Closing Date: November 22, 2019

1. Open Meetings Act Resolution No. 19-01 adopted on January 10, 2019
2. Loan Resolution No. 19-53, adopted October 10, 2019, Agenda, and the Affidavit of the Notice of Adoption of Resolution in the *Deming Headlight*
3. Loan Agreement
4. Intercept Agreement
5. General and No Litigation Certificate
6. Arbitrage and Tax Certificate with Form 8038-G and evidence of filing and Finance Authority Tax Representations Certificate
7. Delivery, Deposit and Cross-Receipt Certificate
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan Counsel to the Finance Authority
9. Finance Authority Project Approval (informational only)

TRANSCRIPT DISTRIBUTION LIST

Luna County, New Mexico  
New Mexico Finance Authority  
BOKF, NA  
Sutin, Thayer & Browne A Professional Corporation

SUTIN THAYER & BROWNE  
A PROFESSIONAL CORPORATION  
LAWYERS

IRWIN S. MOISE (1906-1984)  
LEWIS R. SUTIN (1908-1992)  
FRANKLIN JONES (1919-1994)  
RAYMOND W. SCHOWERS (1948-1995)  
GRAHAM BROWNE (1935-2003)  
NORMAN S. THAYER (1933-2018)  
STEPHEN CHARNAS (1934-2018)

ROBERT G. HEYMAN (Of Counsel)

NOE ASTORGA-CORRAL  
ANDREW J. BARANOWSKI  
LILIANA BENITEZ DE LUNA

ANNE P. BROWNE  
SUZANNE WOOD BRUCKNER  
STEFAN R. CHACON  
MARIA MONTOYA CHAVEZ  
EDUARDO A. DUFFY  
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JESSE D. HALE  
SUSAN M. HAPKA  
WADE L. JACKSON  
DAVID H. JOHNSON  
ROBERT J. JOHNSTON  
JACQUELINE K. KAFKA  
CHRISTINA M. LOONEY

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DEBORAH E. MANN  
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WWW.SUTINFIRM.COM

November 22, 2019

New Mexico Finance Authority  
207 Shelby St.  
Santa Fe, NM 87501

Luna County  
700 South Silver Avenue  
Deming, New Mexico 88030

\$972,550 New Mexico Finance Authority  
Loan to Luna county, New Mexico  
(PPRF-5005)

Ladies and Gentlemen:

We have acted as Loan Counsel to the New Mexico Finance Authority (the "Finance Authority") in connection with the \$972,550 Loan Agreement (the "Loan Agreement") between Luna County, New Mexico (the "Governmental Unit") and the Finance Authority. The Loan Agreement is executed and delivered by the Governmental Unit pursuant to Sections 4-62-1 through 4-62-10, and Section 7-1-6.9 NMSA 1978, as amended, and the Governmental Unit's Resolution No. 19-53, adopted on October 10, 2019 (the "Resolution"). The Loan Agreement has been executed and delivered to provide funds for purchasing and equipping public works utility vehicles/trucks, to fund the Loan Agreement Reserve Account and to pay the Processing Fee, as described in the Loan Agreement.

We have examined the Loan Agreement, Resolution and such other law and certified proceedings and other documents as we deem necessary to deliver this opinion. As to all questions of fact material to the opinions set forth herein, we have relied upon representations of the Governmental Unit contained in the Resolution and certified proceedings and other documents furnished to us, without undertaking to verify the same by independent investigation. In addition, we have relied upon statements of law made by the Governmental Unit's legal counsel in the certified proceedings.

Based on our examination, we are of the opinion that, under existing laws, regulations, rulings and judicial decisions as of the date hereof, subject to the provisions of federal bankruptcy law and other laws affecting creditors' rights and further subject to the exercise of

November 22, 2019

Page 2

judicial discretion in accordance with general principles of equity and the assumptions, qualifications and limitations contained in this opinion:

1. The Resolution creates a valid and binding special limited obligation of the Governmental Unit enforceable in accordance with its terms and creates the pledge of the Gasoline Tax revenues (the “Pledged Revenues”) which it purports to create.

2. The Loan Agreement is a valid and binding special limited obligation of the Finance Authority, enforceable against the Finance Authority in accordance with its terms and provisions.

3. The Loan Agreement is a valid and binding special limited obligation of the Governmental Unit, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.

4. The Loan Agreement is payable solely from, and such payment is secured by a valid and binding first lien (but not an exclusive first lien) on the Pledged Revenues and on a parity with the lien thereon of other outstanding obligations secured by a first lien on the Pledged Revenues as set forth in the Loan Agreement. The Finance Authority has no right to have taxes levied by the Governmental Unit for the payment of principal of or interest on the Loan Agreement and the Loan Agreement does not represent or constitute a debt or a pledge of, or a charge against, the general credit of the Governmental Unit.

5. Assuming continuing compliance by the Finance Authority and the Governmental Unit with the requirements of the Internal Revenue Code of 1986, as amended (the “Code”), with the covenants of the Governmental Unit regarding the use, expenditure and investment of Loan Agreement proceeds and assuming the accuracy of certain representations of the Finance Authority and the Governmental Unit, interest on the Loan Agreement is excludable from gross income of the owners of the Loan Agreement for purposes of federal income taxation. Failure of the Governmental Unit to comply with its covenants and with the requirements of the Code may cause interest on the Loan Agreement to become includable in gross income for federal income tax purposes retroactive to the date of the Loan Agreement.

6. Interest on the Loan Agreement is excluded from net income of the owners thereof for State of New Mexico income tax purposes.

7. The Loan Agreement may be pledged as an “Additional Pledged Loan” or as a “Loan” under the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and BOKF, NA, as successor trustee (the “Trustee”), or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a pledge notification or supplemental indenture.



November 22, 2019

Page 3

We express no opinion with respect to the provisions of the Loan Agreement and the Resolution with respect to indemnification, provisions requiring that amendments be in writing or payment of attorneys' fees. Other than as described in this opinion, we have not addressed nor are we opining on the tax consequences to any person of the investment in, or the receipt of interest on, the Loan Agreement.

This opinion letter is limited to matters expressly stated in this opinion letter and no opinion is inferred or may be implied beyond the matters expressly stated in this opinion letter.

We express no opinion as to, or the effect or applicability of, any laws other than the laws of the State of New Mexico and the federal laws of the United States of America. The opinions expressed herein are based only on the laws in effect as of the date hereof, and in all respects are subject to and may be limited by future legislation, as well as developing case law. We undertake no obligation to update or modify this opinion for any future events or occurrences, including, but not limited to, determining or confirming continuing compliance by the Finance Authority and the Governmental Unit with the requirements of the Code.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of results.

We understand that this opinion is being relied upon by the addressees hereof, and we consent to such reliance, but this opinion may not be delivered to or relied upon by any other person or entity without our written consent.

Very truly yours,

SUTIN, THAYER & BROWNE  
A Professional Corporation

**Information Return for Tax-Exempt Governmental Bonds**

(Rev. September 2018)

► Under Internal Revenue Code section 149(e)

► See separate instructions.

OMB No. 1545-0720

Department of the Treasury  
Internal Revenue Service**Caution:** If the issue price is under \$100,000, use Form 8038-GC.  
► Go to [www.irs.gov/F8038G](http://www.irs.gov/F8038G) for instructions and the latest information.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>Luna County, New Mexico</b>		2 Issuer's employer identification number (EIN)	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) <b>P.O. Box 551</b>	Room/suite	5 Report number (For IRS Use Only) <b>3</b>	
6 City, town, or post office, state, and ZIP code <b>Deming, New Mexico 88031-0551</b>		7 Date of issue <b>11/22/2019</b>	
8 Name of issue <b>New Mexico Finance Authority Equipment Loan</b>		9 CUSIP number <b>n/a</b>	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>Joanne C. Hethcox, Budget and Procurement Director</b>		10b Telephone number of officer or other employee shown on 10a <b>575-546-0494</b>	

**Part II Type of Issue (enter the issue price).** See the instructions and attach schedule.

11 Education . . . . .	11		
12 Health and hospital . . . . .	12		
13 Transportation . . . . .	13		
14 Public safety . . . . .	14		
15 Environment (including sewage bonds) . . . . .	15		
16 Housing . . . . .	16		
17 Utilities . . . . .	17	972,550	00
18 Other. Describe ►	18		
19a If bonds are TANs or RANs, check only box 19a <input type="checkbox"/>			
b If bonds are BANs, check only box 19b <input type="checkbox"/>			
20 If bonds are in the form of a lease or installment sale, check box <input type="checkbox"/>			

**Part III Description of Bonds.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	05/01/2024	\$ 972,550	\$ 972,550	2.714 years	1.0359 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22 Proceeds used for accrued interest . . . . .	22		
23 Issue price of entire issue (enter amount from line 21, column (b)) . . . . .	23	\$972,550	00
24 Proceeds used for bond issuance costs (including underwriters' discount) . . . . .	24	7,294	13
25 Proceeds used for credit enhancement . . . . .	25		
26 Proceeds allocated to reasonably required reserve or replacement fund . . . . .	26	97,255	00
27 Proceeds used to refund prior tax-exempt bonds. Complete Part V . . . . .	27		
28 Proceeds used to refund prior taxable bonds. Complete Part V . . . . .	28		
29 Total (add lines 24 through 28) . . . . .	29	104,549	13
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .	30	\$868,000	87

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded . . . . .	►	_____ years
32 Enter the remaining weighted average maturity of the taxable bonds to be refunded . . . . .	►	_____ years
33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY) . . . . .	►	_____
34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)		

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2018)

**Part VI Miscellaneous**

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . . **35**
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions . . . . . **36a**
- b** Enter the final maturity date of the GIC ► (MM/DD/YYYY) \_\_\_\_\_
- c** Enter the name of the GIC provider ► \_\_\_\_\_
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . . **37**
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► ☐ and enter the following information:
- b** Enter the date of the master pool bond ► (MM/DD/YYYY) \_\_\_\_\_
- c** Enter the EIN of the issuer of the master pool bond ► \_\_\_\_\_
- d** Enter the name of the issuer of the master pool bond ► \_\_\_\_\_
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ► ☒
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ► ☐
- 41a** If the issuer has identified a hedge, check here ► ☐ and enter the following information:
- b** Name of hedge provider ► \_\_\_\_\_
- c** Type of hedge ► \_\_\_\_\_
- d** Term of hedge ► \_\_\_\_\_
- 42** If the issuer has superintegrated the hedge, check box . . . . . ► ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ► ☐
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ► ☐
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ► ☐ and enter the amount of reimbursement . . . . . ► \_\_\_\_\_
- b** Enter the date the official intent was adopted ► (MM/DD/YYYY) \_\_\_\_\_

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ **Linda Smrkovsky, Chair, Bd of Co. Comm.**  
Type or print name and title

**Paid Preparer Use Only**

Print/Type preparer's name <b>Suzanne Wood Bruckner</b>	Preparer's signature _____	Date _____	Check <input type="checkbox"/> if self-employed	PTIN _____
Firm's name ► <b>Sutin, Thayer &amp; Browne A Professional Corporation</b>			Firm's EIN ► _____	
Firm's address ► <b>6100 Uptown Blvd, NE, Suite 400, Albuquerque, NM 87110</b>			Phone no. <b>505-883-2500</b>	

\$972,550  
LUNA COUNTY, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO                     )  
LUNA COUNTY                               ) ss.   ARBITRAGE AND TAX  
  )    CERTIFICATE

On behalf of Luna County, New Mexico (the “Governmental Unit”), and in connection with the Loan Agreement dated November 22, 2019 (the “Loan Agreement”), relating to the financing the cost of purchasing and equipping public works utility vehicles/trucks for use by the Governmental Unit, funding the Loan Agreement Reserve Account and paying the Processing Fee (the “Project”) as described in the Loan Agreement, and evidencing the Governmental Unit’s obligation in the aggregate principal amount of \$972,550, the Governmental Unit hereby certifies as follows:

Capitalized terms used in this Certificate have the same meanings as defined in Resolution No. 19-53 adopted on October 10, 2019, unless otherwise defined in this Certificate or the context requires otherwise.

1.     The Project. The Governmental Unit is entering into the Loan Agreement simultaneously with delivery of this Certificate. The Loan Agreement evidences the loan (the “Loan”) made by the New Mexico Finance Authority (the “Finance Authority”) to provide funds to pay the costs of acquiring the Project described in Exhibit “A” attached to the Loan Agreement and to pay certain costs incurred in connection with the execution and delivery of the Loan Agreement.

2.     Security for the Loan Agreement. Debt service on the Loan Agreement will be secured by the pledged revenues described in Exhibit “A” attached to the Loan Agreement (the “Pledged Revenues”) sufficient to pay debt service due in connection with the Loan, which Pledged Revenues have been pledged to the Finance Authority pursuant to the Loan Agreement.

3.     Finance Authority Public Project Revolving Fund Program. The Governmental Unit acknowledges that the Finance Authority may assign and transfer the Loan Agreement to the BOKF, NA, as successor trustee (the “Trustee”) pursuant to the Indenture, as defined in the Loan Agreement, and all Supplemental Indentures thereto, between the Finance Authority and the Trustee (collectively, the “Indenture”). Pursuant to the Indenture, the Loan Agreement may be pledged as an Additional Pledged Loan to the Trustee as additional security for the payment of amounts due on the Finance Authority’s Public Project Revolving Fund Revenue Bonds outstanding at the time of such pledge.

4.     Sources and Uses of Loan Funds. The Governmental Unit has received Loan proceeds from the public project revolving fund, as defined in the New Mexico Finance Authority Act, Sections 6-21-1, *et seq.*, NMSA 1978, as amended and supplemented, in the amount of \$972,550 from the Finance Authority (the “Proceeds”). The Proceeds do not exceed



the amount reasonably necessary for the purposes for which the Loan Agreement was entered into.

5. Expenditure Expectations. The Governmental Unit expects to incur a substantial binding obligation within six (6) months of the date hereof with regard to the Project, which obligation involves the expenditure of no less than five percent (5%) of the Proceeds. The Governmental Unit reasonably expects that the \$868,000 of Proceeds deposited into the Governmental Unit's Program Account in the Program Fund together with other legally available funds and anticipated earnings from the investment of such Proceeds until they are spent, are expected to be expended within three (3) years of the date hereof.

The estimated total costs of the Project will not be less than \$868,000 plus investment earnings thereon during the acquisition period.

Proceeds in the amount of \$7,294.13 will be deducted from the Proceeds and paid directly to the Finance Authority as the Processing Fee for the costs of originating and servicing the Loan.

Proceeds in the amount of \$0.87 will be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 of the Loan Agreement.

6. Investment of Proceeds. Except for the investment of the Proceeds (i) in the Program Account established under the Indenture with respect to the Loan Agreement pending the payment of the costs of the Project, (ii) in the Loan Agreement Reserve Account established under the Indenture with respect to the Loan Agreement to be applied to prevent deficiencies in the payment of principal and interest on the Loan Agreement, and (iii) in the Finance Authority Debt Service Account established and administered by the Finance Authority pending the payment of debt service on the Loan Agreement, there will be no investment of the Proceeds.

7. Bona Fide Debt Service Fund. Debt service payments on the Loan Agreement will be paid from the Pledged Revenues of the Governmental Unit deposited to the Finance Authority Debt Service Account created with respect to the Loan Agreement. Because the Pledged Revenues of the Governmental Unit for any year will exceed debt service on the Loan Agreement, it is assumed that current debt service paid by the Governmental Unit for deposit in the Finance Authority Debt Service Account will be derived entirely from the current Pledged Revenues. The Finance Authority Debt Service Account will be depleted at least once a year except for an amount not to exceed the greater of the earnings on the Finance Authority Debt Service Account for the immediately preceding bond year or one-twelfth (1/12<sup>th</sup>) of debt service on the Loan for the immediately preceding bond year. The Governmental Unit has not created or established, nor does it expect to create or establish, any debt service fund, redemption fund, replacement fund, sinking fund or other similar fund which is reasonably expected to be used to pay principal or interest on the Loan Agreement or pledged therefor, except for the Finance Authority Debt Service Account and the Loan Agreement Reserve Account.

8. Reserve Account. Proceeds in the amount of \$97,255.00 will be deposited in the Governmental Unit's Loan Agreement Reserve Account in the Agreement Reserve Fund held by

the Trustee under the Indenture, which amount does not exceed the least of (i) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; (ii) the maximum annual principal and interest requirements under the Loan Agreement, or (iii) ten percent (10%) of the Loan Agreement Principal Amount. Amounts held in the Governmental Unit's Loan Agreement Reserve Account may be applied to prevent deficiencies in the payment of principal and interest on the Loan Agreement resulting from a failure by the Governmental Unit to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service on the Loan Agreement.

9. No Disposition of Project. The undersigned reasonably expect that no part of the Project acquired with the Proceeds will be sold or otherwise disposed of, in whole or in part, during the term of the Loan Agreement.

10. General Tax Covenant. The Governmental Unit has covenanted in the Loan Agreement that no use will be made of the Proceeds, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148(b)) of the Loan Agreement, which use, if it had been reasonably expected on the date hereof, would have caused the Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. The Governmental Unit has further obligated itself in the Loan Agreement to comply throughout the term of the Loan Agreement with the requirements of Sections 103 and 141 through 150 of the Code and regulations proposed or promulgated with respect thereto. Pursuant to the Loan Agreement, the Governmental Unit shall be liable for any rebatable arbitrage payable pursuant to Section 103 and 141 through 150 of the Code and regulations proposed or promulgated with respect thereto.

11. Private Business Use Limitations. None of the Proceeds will be used by a private business or any entity other than a governmental unit or secured by payments from or property of a private business or any entity other than a governmental unit except pursuant to a management contract which conforms with Revenue Procedure 2017-13 of the United States Treasury. For purposes of the preceding sentence a governmental unit does not include the United States Government or any agency or instrumentality thereof.

12. No Common Plan of Financing. There are no other obligations which are being issued or sold at substantially the same time as the Loan Agreement pursuant to a common plan of financing with the Loan Agreement and that will be paid out of the Pledged Revenues or will have substantially the same claim to be paid out of the Pledged Revenues as the Loan Agreement.

13. No Federal Guarantees. The Loan is not federally guaranteed within the meaning of Section 149(b) of the Code.

14. Information Filing. Loan Counsel for the Finance Authority, on behalf of the Governmental Unit, will timely file the Form 8038-G with respect to the Loan Agreement attached hereto as Exhibit "A" with the Internal Revenue Service. The Finance Authority has verified certain information necessary to complete the Form 8038-G as shown on the Finance Authority Certificate attached hereto as Exhibit "B".

15. Hedge Bonds. The Loan is not a hedge bond as defined in Section 149 of the Code.

16. No Reimbursement. None of the Proceeds will be used to reimburse the Governmental Unit for costs paid for the Project more than sixty (60) days prior to the date hereof.

17. No Refunding. Proceeds of the Loan are not being used to refund any other obligation of the Governmental Unit.

18. Economic Life of Project. The weighted average maturity of 2.714 years of the Loan Agreement does not exceed 120% of the reasonably expected economic life of the Project, which is at least four (4) years.

19. Qualified Tax-Exempt Obligations. The Loan Agreement is a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Governmental Unit represents that the reasonably anticipated amount of qualified tax-exempt obligations which will be issued by the Governmental Unit during the current calendar year does not exceed \$10,000,000 and the Governmental Unit will not designate more than \$10,000,000 of “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. For purposes of this Section, “aggregated issuer” means any entity which: (i) issues obligations on behalf of the Governmental Unit; (ii) derives its issuing authority from the Governmental Unit; or (iii) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e).

20. Rebate Exception. The Governmental Unit is a governmental unit with general taxing powers, no part of the Loan Agreement is a private activity bond, ninety-five percent (95%) or more of the proceeds are to be used for local governmental activities of the Governmental Unit and, the aggregate face amount of all tax-exempt obligations issued by the Governmental Unit during the current calendar year is not reasonably expected to exceed \$5,000,000. There are no subordinate entities of the Governmental Unit which are authorized to issue tax-exempt obligations. If the Governmental Unit fails to satisfy all of the provisions of this paragraph 20 for any reason, as provided in the Loan Agreement and consistent with the covenants of the Governmental Unit contained therein, any rebate owed to the United States Treasury will be paid in the amounts and at the times provided in Section 148 of the Code.

21. Record Retention. The Governmental Unit will manage and retain records related to the Loan as follows:

A. Records will be retained for the life of the Loan, including any refunding loans related thereto, plus three (3) years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to the Loan and compliance functions;

B. Basic records relating to the Loan transaction, including transcript documents executed in connection with the issuance of the Loan (i.e., the authorizing documents, Form 8038-G, the tax certificate, and any elections made with respect to the Loan, if applicable),

any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T;

C. Records pertaining to the use of Loan-financed facilities by public and private sources including copies of management agreements and research agreements;

D. Records pertaining to expenditures of Loan proceeds including requisitions, appraisal and property purchase contracts, account statements, invoices, payment vouchers, and the final allocation of proceeds to expenditures;

E. Records pertaining to all sources of payment or security for the Loan; and

F. Records pertaining to investments including guaranteed investment contract documents under the Treasury Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

[Signature page follows]



This certificate is being executed and delivered to establish the reasonable expectations of the Governmental Unit for purposes of Sections 103 and 141 through 148 of the Code, and the undersigned officers of the Governmental Unit are the officers of the Governmental Unit charged with the responsibility of entering into the Loan Agreement. The foregoing is based upon the reasonable expectations of the undersigned on the date hereof, and to the best of our knowledge, information and belief, the above expectations are reasonable.

Dated: October 5, 2018.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Linda Smrkovsky, Chair

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk

By \_\_\_\_\_  
Joanne C. Hethcox,  
Budget and Procurement Director (Finance)

[SEAL]

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**EXHIBIT "B"**

**NEW MEXICO FINANCE AUTHORITY TAX REPRESENTATIONS CERTIFICATE**

The undersigned hereby certifies as follows with respect to the \$972,550 Loan Agreement dated November 22, 2019 (the "Loan") from the New Mexico Finance Authority (the "Finance Authority") to Luna County, New Mexico (the "Governmental Unit");

1. The Finance Authority is making the Loan for its own account (and not on behalf of another) in the principal amount of \$972,550, without accrued interest. The Finance Authority is not acting as an Underwriter with respect to the Loan. The Finance Authority has no present intention to sell, reoffer, or otherwise dispose of the Loan (or any portion of the Loan or any interest in the Loan). The Finance Authority has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Loan and the Finance Authority has not agreed with the Governmental Unit pursuant to a written agreement to sell the Loan to persons other than the Finance Authority, therefore the "issue price" of the Loan is \$972,550.

2. The Arbitrage Yield on the Loan, calculated in accordance with the applicable U.S. Treasury Regulations from interest to be paid on the Loan, is 1.0359%.

3. Funding the Loan Agreement Reserve Account with proceeds of the Loan [cash] in the amount of \$97,255 was required by the Finance Authority as a condition of making the Loan, and is, in the best judgment of the undersigned, reasonably required to provide the Loan at a reasonable interest rate for the Governmental Unit and is, in the best judgment of the undersigned, established at a level of funding comparable to that found for obligations of similar credit quality as the Loan which were issued or originated within the past year.

4. The Weighted Average Maturity of the Loan, calculated in accordance with the applicable U.S. Treasury Regulations, is 2.714 years.

5. The undersigned understands that the statements made herein will be relied upon by the Governmental Unit in its effort to complete the Information Return for Tax-Exempt Governmental Obligations (Form 8038-G), required to be filed for the Loan pursuant to the Internal Revenue Code of 1986, as amended, and with regard to establishing facts and circumstances relied on by the Governmental Unit and bond counsel in connection with the execution and delivery of the Loan and the exclusion of interest on the Loan from gross income for federal income tax purposes. Such reliance is hereby authorized and approved.

Dated this November 22, 2019.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

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\$972,550  
LUNA COUNTY, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO                   )  
LUNA COUNTY                            ) ss. DELIVERY, DEPOSIT AND  
  ) CROSS-RECEIPT CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Chair, Budget and Procurement Director and County Clerk of Luna County, New Mexico (the "Governmental Unit"):

1. On the date of this Certificate, the Governmental Unit executed and delivered, or caused to be executed and delivered, a Loan Agreement between the Governmental Unit and the New Mexico Finance Authority (the "Finance Authority"), in the aggregate principal amount of \$972,550 (the "Loan Agreement"), as authorized by Governmental Unit Resolution No. 19-53 (the "Resolution") adopted on October 10, 2019, relating to the execution and delivery of the Loan Agreement and the Intercept Agreement. The undersigned have received \$972,550 as proceeds from the Loan Agreement, being the full purchase price therefore.

2. The proceeds of the Loan Agreement will be placed in the funds and accounts created for the deposit of such moneys under the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, each by and between the Finance Authority and the BOKF, NA, as Trustee and its successors and assigns, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture, as follows:

Governmental Unit's	
Account in the Program Fund:	\$868,000.00
Deposit to Loan Agreement	
Reserve Account:	\$ 97,255.00
Deposit to Finance Authority Debt	
Service Account:	\$ .87
Processing Fee paid to the	
Finance Authority:	\$ 7,294.13
Total:	\$972,550.00

3. The proceeds of the Loan Agreement will be available to the Governmental Unit upon submittal of a Requisition Form to the Finance Authority in the form attached to the Loan Agreement as Exhibit "C" and will be used as set forth in the Resolution and the Loan Agreement.

WITNESS our hands this November 22, 2019.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Linda Smrkovsky, Chair

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk

By \_\_\_\_\_  
Joanne C. Hethcox,  
Budget and Procurement Director (Finance)

[SEAL]



It is hereby certified by the undersigned, a duly qualified and acting official of the New Mexico Finance Authority, that, the undersigned has, on the date of this Certificate, received from Luna County, New Mexico the Loan Agreement and the Intercept Agreement.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

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\$972,550  
LUNA COUNTY, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO                    )  
  ) ss.   GENERAL AND NO LITIGATION  
LUNA COUNTY                            )       CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly elected and chosen, Chair, Budget and Procurement Director, County Clerk and Attorney for Luna County, New Mexico (the "Governmental Unit") in the State of New Mexico (the "State") (provided, that the Attorney for the Governmental Unit is certifying only as to Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 20, 21, 22, 24 and 25 hereof):

Capitalized terms used in this Certificate have the same meaning as defined in Governmental Unit Resolution No. 19-53 adopted on October 10, 2019 (the "Resolution") unless otherwise defined in this Certificate or the context requires otherwise.

1.     The Governmental Unit is a political subdivision of the State and is duly organized and validly existing under and pursuant to the laws of the State, its full name being "Luna County, New Mexico."

2.     The Governmental Unit was established in the year 1901, Section 4-16-1, NMSA 1978, as amended.

3.     From at least June 14, 2019 (except as otherwise noted), to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers of the Governmental Unit:

Chair:	Linda Smrkovsky
Commissioners:	Barbara Reedy John Sweetser
County Manager:	David X. McSherry
Budget & Procurement Director:	Joanne C. Hethcox
County Clerk:	Andrea Rodriguez
Treasurer:	Gloria Rodriguez
County Attorney:	Charles C. Kretek, Esq.

4. The population of the Governmental Unit's jurisdictional and service area is not less than seventy-five percent (75%) English speaking and is less than twenty-five percent (25%) Spanish speaking.

5. There is no reason within our knowledge, after due inquiry with respect thereto, why the Governmental Unit may not enter into the Loan Agreement and the Intercept Agreement with the New Mexico Finance Authority (the "Finance Authority"), as authorized by the Resolution.

6. The Governmental Unit has duly authorized the execution, delivery and performance of its obligations under the Loan Agreement and the Intercept Agreement. The Loan Agreement and the Intercept Agreement have been duly authorized, executed and delivered by the Governmental Unit.

7. The Resolution has been duly signed and adopted in accordance with all applicable laws and has not been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Resolution. The Resolution constitutes valid and sufficient legal authority for the Governmental Unit to carry out and enforce the provisions of the Loan Agreement and Intercept Agreement. No referendum petition has been filed with respect to the Resolution under the provisions of the laws, bylaws or regulations or charter of the Governmental Unit and the laws of the Governmental Unit or the State.

8. No event will result from the execution and delivery of the Loan Agreement or the Intercept Agreement that constitutes a default or an event of default under either the Loan Agreement, the Intercept Agreement or the Resolution, and no event of default and no default under the Loan Agreement, the Intercept Agreement or the Resolution has occurred and is continuing on the date of this Certificate.

9. The Governmental Unit has duly authorized and approved the consummation by it of all transactions and has complied with all requirements and satisfied all conditions, which are required by the Loan Agreement and the Intercept Agreement to have been authorized, approved, performed or consummated by the Governmental Unit at or prior to the date of this Certificate. The Governmental Unit has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution, the Loan Agreement and the Intercept Agreement.

10. A. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the enforceability of the Loan Agreement or the Intercept Agreement or to any of the actions required to be taken by the Resolution, the Loan Agreement or the Intercept Agreement on or prior to the date of this Certificate have been obtained and are in full force and effect; and

B. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the financing of the Project have been obtained and are in full force and effect.

11. None of the following does or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under any law, court decree or order,

governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound:

A. The Governmental Unit's adoption of the Resolution; or

B. Any action contemplated by or pursuant to the Resolution, the Loan Agreement, or the Intercept Agreement.

12. No material adverse change has occurred, nor has any development occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects, or properties of the Governmental Unit or the Pledged Revenues since the date of the Resolution.

13. To the best of our knowledge and belief, after due inquiry with respect thereto, none of the events of default referred to in Article X of the Loan Agreement has occurred.

14. Subsequent to the adoption of the Resolution, the Governmental Unit has not pledged or otherwise encumbered the Pledged Revenues. On the date of this Certificate there are no other outstanding obligations with a lien or encumbrance against the Pledged Revenues senior to or on a parity with the lien of the Loan Agreement except as set forth in the Term Sheet attached as Exhibit "A" to the Loan Agreement.

15. The Loan Agreement prohibits the Governmental Unit from issuing any bonds or other obligations with a lien on Pledged Revenues senior to the lien thereon of the Loan Agreement on the Pledged Revenues. The Loan Agreement permits the Governmental Unit to issue additional bonds or other obligations with a lien on the Pledged Revenues on a parity with or subordinate to the lien of the Loan Agreement on the Pledged Revenues upon satisfaction of the conditions set forth in the Loan Agreement.

16. There is no threatened action, suit, proceeding, inquiry or investigation against the Governmental Unit, at law or in equity, by or before any court, public board or body, nor to the Governmental Unit's knowledge is there any basis therefor, affecting the existence of the Governmental Unit or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of revenues or assets of the Governmental Unit pledged or to be pledged to pay the principal, premium, if any, and interest on the Loan Agreement, or in any way materially adversely affecting or questioning: (a) the territorial jurisdiction of the Governmental Unit; (b) the use of the proceeds of the Loan Agreement for the Project and to pay certain costs of the Finance Authority associated with the administration of its public projects revolving fund loan program; (c) the validity or enforceability of the Loan Agreement, the Intercept Agreement or any proceedings of the Governmental Unit taken with respect to the Loan Agreement, the Intercept Agreement or the Resolution; (d) the execution and delivery of the Loan Agreement or the Intercept Agreement; or (e) the power of the Governmental Unit to carry out the transactions contemplated by the Loan Agreement, the Intercept Agreement or the Resolution.

17. The Governmental Unit has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Governmental Unit contained in the Loan Agreement and in the Resolution are true and correct as of the date hereof.

18. The Governmental Unit is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest except that no representation is made with respect to industrial revenue bonds or conduit bonds payable solely from installment sale or lease payments, loan repayments or other amounts received by the Governmental Unit from private entities.

19. To the best of our knowledge and belief, neither the Chair, County Clerk, any member of the Governing Body, nor any other officer, employee or other agent of the Governmental Unit is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

20. Regular meetings of the Governing Body have been held at 700 South Silver Avenue, 3<sup>rd</sup> Floor, Deming, New Mexico 88030, the principal meeting place of the Governing Body.

21. The Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Governing Body in connection with the Loan Agreement. Open Meetings Act Resolution No. 19-01, as adopted and approved by the Governing Body on January 10, 2019, establishes notice standards as required by Sections 10-15-1 through 10-15-4, NMSA 1978. Open Meetings Act Resolution No. 19-01 has not been amended or repealed. All action of the Governing Body with respect to the Loan Agreement, the Intercept Agreement and the Resolution was taken at meetings held in compliance with Open Meetings Act Resolution No. 19-01.

22. The *Deming Headlight* is a legal newspaper which maintains an office and is of general circulation in the Governmental Unit's jurisdictional and service area.

23. The Pledged Revenues from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

24. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

25. The Chair and County Clerk, on the date of the signing of the Loan Agreement and the Intercept Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Governmental Unit authorized to execute such agreements.

26. This Certificate is for the benefit of the Finance Authority.

27. This Certificate may be executed in counterparts.

[Signature page follows]



WITNESS our hands and the seal of the Governmental Unit this 22<sup>nd</sup> day of November, 2019.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Linda Smrkovsky, Chair

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk

By \_\_\_\_\_  
Joanne C. Hethcox,  
Budget and Procurement Director (Finance)

[SEAL]

APPROVED:

Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 20, 21, 22, 24 and 25 are approved and confirmed.

By \_\_\_\_\_  
Charles C. Kretek, Esq.  
Attorney for Luna County, New Mexico

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## INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into November 22, 2019, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and LUNA COUNTY, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

### W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as purchasing and equipping public works utility vehicles/trucks for use by the Governmental Unit (the "Project"); and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 4-62-1 through 4-62-10, NMSA 1978, as amended (collectively, the "Act"), the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to acquire the Project and such acquisition is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow \$972,550 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 7-1-6.9, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of Gasoline Tax revenues (the "Pledged Revenues") from the State Taxation and Revenue Department (the "Distributing State Agency") be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of \$972,550 to finance the acquisition of the Project. Pursuant to the Loan Agreement and this Intercept Agreement, the Loan and all Loan Agreement Payments on the Loan made by or on behalf of the Governmental Unit shall be collected by the Finance Authority and remitted to the Trustee. All payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from distributions of the Pledged Revenues pursuant to Sections 7-1-6.9 and 7-1-6.15, NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent applicable and to the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may

choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Resolution No. 19-53, passed and adopted on October 10, 2019, by the Governing Body of the Governmental Unit, which Resolution is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts. This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the first distribution of the Pledged Revenues that is to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit distributed in January, 2020.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Linda Smrkovsky, Chair

(SEAL)

Attest:

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk

Acknowledged:

By \_\_\_\_\_  
\_\_\_\_\_, Taxation and Revenue Department

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



EXHIBIT "A"

INTERCEPT SCHEDULE  
LUNA COUNTY, NEW MEXICO

Payment Dates	Pledged Revenues	Amount
Monthly:  January, 2020 through April, 2020	The distribution of Gasoline Tax Revenues to Luna county, New Mexico pursuant to Section 7-1-6.9, NMSA 1978, which distributions are made monthly by the State Taxation and Revenue Department	\$24,855.36
May, 2020 through April, 2024		\$18,758.86

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\$972,550

LOAN AGREEMENT

dated

November 22, 2019

by and between the

NEW MEXICO FINANCE AUTHORITY

and

LUNA COUNTY, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA, as trustee under an Indenture, as defined in Article I of this Loan Agreement.

## LOAN AGREEMENT

THIS LOAN AGREEMENT dated November 22, 2019, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and LUNA COUNTY, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

### WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "Finance Authority Act"); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of purchasing and equipping public works utility vehicles/trucks for the Governmental Unit as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(b) of the Finance Authority's Amended Rules and Regulations Governing the Public Project Revolving Fund Program; and

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Resolution; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

#### ARTICLE I DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the foregoing recitals, unless the context clearly requires otherwise.

“Act” means the general laws of the State, including Sections 4-62-1 through 4-62-10; Sections 7-13-1 through 7-13-18 and Section 7-1-6.9 NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Resolution.

“Additional Payment Obligations” mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

“Aggregate Annual Debt Service Requirement” means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means, in the case of the Governmental Unit, Chair, Vice Chair, Budget and Procurement Director and County Clerk, and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Blended Interest Rate” means the rate of interest on this Loan Agreement as shown on the Term Sheet.

“Bond Counsel” means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semiannually by The Bond Buyer’s Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

“Closing Date” means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

“Event of Default” means one or more events of default as defined in Section 10.1 of this Loan Agreement.

“Expenses” means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

“Finance Authority Debt Service Account” means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

“Fiscal Year” means the period beginning on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the duly organized County Commission of the Governmental Unit, and any successor governing body of the Governmental Unit.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).



“Independent Accountant” means: (i) an accountant employed by the State and under the supervision of the State Auditor; or (ii) any certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Governmental Unit who: (a) is, in fact, independent and not under the domination of the Governmental Unit; (b) does not have any substantial interest, direct or indirect, with the Governmental Unit; and (c) is not connected with the Governmental Unit as an officer or employee of the Governmental Unit, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit.

“Intercept Agreement” means the Intercept Agreement dated November 22, 2019, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

“Loan Agreement” means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

“Loan Agreement Balance” means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

“Loan Agreement Payment” means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Principal Amount” means the original principal amount of this Loan Agreement as shown on the Term Sheet.

“Loan Agreement Reserve Account” means the loan agreement reserve account established in the name of the Governmental Unit, funded from the proceeds of this Loan Agreement and administered by the Trustee pursuant to the Indenture.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“Loan Agreement Term” means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

“NMSA” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Parity Obligations” means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

“Permitted Investments” means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody’s Investors Service, Inc., or S&P Global Ratings; and (iv) the State Treasurer’s short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

“Pledged Revenues” means revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Resolution and described on the Term Sheet.

“Principal Component” means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit “B” hereto.

“Processing Fee” means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means the project(s) described on the Term Sheet.

“Resolution” means the Governmental Unit Resolution No. 19-53 adopted by the Governing Body on October 10, 2019, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Term Sheet” means Exhibit “A” attached hereto.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

“Unassigned Rights” means the rights of the Finance Authority to receive payment of the Processing Fee, administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit.  
The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Resolution shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized by the Act to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement (less the deposits to the Loan

Agreement Reserve Account, if any, the Finance Authority Debt Service Account and the Processing Fee) to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of purchasing and equipping public works utility vehicles/trucks for the Governmental Unit. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Section 7-1-6.9(C) NMSA 1978, as amended.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of 2.714 years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is at least four (4) years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed

the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement; and (iii) an amount necessary to pay the Processing Fee and the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement.

Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Resolution, shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.



(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date. The Governmental Unit hereby further represents and covenants

to comply with Section 7.6 hereof, which designates this Loan Agreement as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code.

(x) Pledged Revenues Covenants. The Pledged Revenues consist of Gasoline Tax revenues imposed pursuant to Section 7-13-3, NMSA 1978, as amended, and distributed to the Governmental Unit by the Distributing State Agency pursuant to Section 7-1-6.9, NMSA 1978, as amended.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the Finance Authority’s findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is \$27,602, which is less than eighty percent (80%) of the State median household income of \$46,718.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of the Governmental Unit.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property, and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement, or to comply with its obligations under this Loan Agreement or the

Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

### ARTICLE III LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

### ARTICLE IV LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

b) To the Trustee, the amount shown on the Term Sheet as the Loan Agreement Reserve Account deposit shall be deposited in the Governmental Unit's account maintained in the Loan Agreement Reserve Fund by the Trustee pursuant to the Indenture; and

(c) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof; and

(d) To the Finance Authority, payment in the amount shown on the Term Sheet as the Processing Fee.

### ARTICLE V LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account and the Loan Agreement Reserve Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. As provided in the Intercept Agreement, the Distributing State Agency shall cause to be transferred from the Pledged Revenues, the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amount provided in subsection (c) for deposit into the Loan Agreement Reserve Account. The Finance Authority Debt Service Account shall be established and held by the Finance Authority on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.



(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received pursuant to the Intercept Agreement from the Governmental Unit, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is May 1, 2020), and (B) on the first day of each month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is May 1, 2020), and (B) on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) As a second charge and lien on the Pledged Revenues received from the Governmental Unit after deposits in (a) and (b) have been made, the Trustee shall transfer and deposit to the Loan Agreement Reserve Account any amounts necessary to replenish the Loan Agreement Reserve Account to the Loan Agreement Reserve Requirement. Moneys in the Loan Agreement Reserve Account shall be held and administered by the Trustee and shall be used only to prevent deficiencies in the payment of the Principal Component and Interest Component of the Loan Agreement Payments resulting from a failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service requirements on the Loan; provided, that the final two Interest Components and the final Principal Component on the Loan shall be payable from the Loan Agreement Reserve Account. If funds are withdrawn from the Loan Agreement Reserve Account to pay debt service on the Loan, at the direction of the Finance Authority or the Trustee, additional Pledged Revenues shall be deposited into the Loan Agreement Reserve Account in amounts in equal monthly installments sufficient to restore the amount on deposit therein to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement, and any moneys in the Loan Agreement Reserve Account may, at the



written direction of the Finance Authority, be applied to the Finance Authority Debt Service Account, applied to the prepayment of the Loan pursuant to Article VIII hereof, or released to the Governmental Unit for the Project or used for any other purposes provided by law. If amounts in the Loan Agreement Reserve Account are released by the Finance Authority, the references in this Loan Agreement to the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement shall be of no further force and effect.

(c) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account as provided herein.

(b) No default shall exist in connection with any of the covenants or requirements of the Resolution or this Loan Agreement.

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months

preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty-five percent (125%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the Governmental Unit's Treasurer or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or any bonds

or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority for the Governmental Unit may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and the Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

## ARTICLE VI THE PROJECT

Section 6.1 Agreement to Acquire the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts,

orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to acquire the Project. The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

## ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is



required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

Section 7.6 Bank Designation of Loan Agreement. For purposes of and in accordance with Section 265 of the Code, the Governmental Unit hereby designates this Loan Agreement as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. The Governmental Unit reasonably anticipates that the total amount of tax exempt obligations (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the Governmental Unit and by any aggregated issuer during the current calendar year will not exceed \$10,000,000. For purposes of this Section 7.6, "aggregated issuer" means any entity which: (i) issues obligations on behalf of the Governmental Unit; (ii) derives its issuing authority from the Governmental Unit; or (iii) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit hereby represents that: (a) it has not created and does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 265(b)(3)(C) or (D) of the Code; and (b) the total amount of obligations so designated by the Governmental Unit, and all aggregated issuers for the current calendar year, does not exceed \$10,000,000.

Section 7.7 Arbitrage Rebate Exemption. The Governmental Unit hereby certifies and warrants, for the purpose of qualifying for the exception contained in Section 148(f)(4)(D) of the Code, to the requirement to rebate arbitrage earnings from investments of the proceeds of the Loan Agreement (the "Rebate Exemption"), that: (i) this Loan Agreement is issued by the Governmental Unit which has general taxing powers; (ii) neither this Loan Agreement nor any



portion thereof is a private activity bond as defined in Section 141 of the Code ("Private Activity Bond"); (iii) all of the net proceeds of this Loan Agreement are to be used for local government activities of the Governmental Unit (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Governmental Unit); and (iv) neither the Governmental Unit nor any aggregated issuer has issued or is reasonably expected to issue any Tax-Exempt Bonds other than (A) Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) and (B) issued to refund (other than to advance refund (as used in the Code)) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, during the current calendar year, which would in the aggregate amount exceed \$5,000,000. For purposes of this paragraph, "aggregated issuer" means any entity which: (a) issues obligations on behalf of the Governmental Unit; (b) derives its issuing authority from the Governmental Unit; or (c) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit hereby represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D) of the Code.

Accordingly, with respect to the Loan Agreement, the Governmental Unit will qualify for the rebate exemption granted under Section 148(f)(4)(D) of the Code and the Governmental Unit shall be treated as meeting the requirements of paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States.

The Governmental Unit hereby further represents and covenants that if it is determined that rebatable arbitrage, as that term is defined under Section 148 of the Code and related regulations, is required to be paid to the United States, that it will pay such rebatable arbitrage.

#### ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after one (1) year following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In

the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

## ARTICLE IX INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

## ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its

part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on



the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE XIMISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, P.O. Box 551, Deming, New Mexico 88031-0551, Attention: Budget and Procurement Director; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.



Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on August 22, 2019, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS  
OF THE NEW MEXICO FINANCE AUTHORITY:  
Sutin, Thayer & Browne A Professional Corporation  
As Loan Counsel

By \_\_\_\_\_  
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF  
THE NEW MEXICO FINANCE AUTHORITY:

By \_\_\_\_\_  
Daniel C. Opperman  
General Counsel

LUNA COUNTY, NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Linda Smrkovsky, Chair

ATTEST:

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk

5224297.DOC

**EXHIBIT "A"**

**TERM SHEET**

**New Mexico Finance Authority Loan PPRF-5005**

Governmental Unit:	Luna County, New Mexico
Project Description:	Purchase and equip public works utility vehicles/trucks, including, but not limited, to cab trucks, tire cutters and shredders and roll-off trucks
Loan Agreement Principal Amount:	\$972,550
Disadvantaged Funding Amount:	\$150,000
Pledged Revenues:	State Gasoline Tax imposed pursuant to Section 7-13-3, NMSA 1978, as amended, and distributed to the Governmental Unit pursuant to Section 7-1-6.9, NMSA 1978, as amended
Coverage Ratio:	125%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department
Currently Outstanding Parity Obligations:	None
Additional Parity Bonds Test:	125%
Authorizing Legislation:	Resolution No. 19-53 adopted on October 10, 2019
Closing Date:	November 22, 2019
Blended Interest Rate:	1.034192%
Program Account Deposit:	\$868,000
Loan Agreement Reserve Account Deposit:	\$97,255
Finance Authority Debt Service Account Deposit:	\$0.87
Processing Fee:	\$7,294.13
First Interest Payment Date:	May 1, 2020
First Principal Payment Date:	May 1, 2020

Final Payment Date:

May 1, 2024

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A  
LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE  
AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY



**EXHIBIT "B"**

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

**EXHIBIT "C"**

**FORM OF REQUISITION**

RE: \$972,550 Loan Agreement by and between Luna County, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA  
c/o New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Accounting

You are hereby authorized to disburse from the Program Account – Luna County, New Mexico (2019 Equipment Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-5005

CLOSING DATE: November 22, 2019

REQUISITION NUMBER: \_\_\_\_\_

NAME AND ADDRESS OF PAYEE: \_\_\_\_\_

AMOUNT OF PAYMENT: \$ \_\_\_\_\_

PURPOSE OF PAYMENT: \_\_\_\_\_

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – Luna County, New Mexico (2019 Equipment Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and Luna County, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, Luna County, New Mexico, shall, and understands its obligation to, complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_

By \_\_\_\_\_  
Authorized Officer of Borrower  
Title \_\_\_\_\_  
Print Name and Title

**EXHIBIT "D"**

**CERTIFICATE OF COMPLETION**

RE: \$972,550 Loan Agreement by and between Luna County, New Mexico and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Accounting

Susen Ellis  
Vice President, Corporate Trust  
BOKF, NA  
100 Sun Avenue NE, Suite 500  
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-5005

CLOSING DATE: November 22, 2019

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_

By \_\_\_\_\_  
Authorized Officer of Governmental Unit

Title \_\_\_\_\_  
Print Name and Title

STATE OF NEW MEXICO  
LUNA COUNTY

The County Commission (the “Governing Body”) of Luna County, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body at County Commission Chambers of the Luna County Courthouse, 700 S. Silver Avenue, Deming, New Mexico 88030 being the meeting place of the Governing Body for the regular meeting held on October 10, 2019, at the hour of 10:00 a.m. Upon roll call, the following members were found to be present:

Present:

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Absent:

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Also Present:

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Thereupon, there was officially filed with the County Clerk a copy of a proposed resolution in final form.

LUNA COUNTY, NEW MEXICO  
RESOLUTION NO. 19-53

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN LUNA COUNTY, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF UP TO \$972,550 FOR THE PURPOSE OF PURCHASING AND EQUIPPING PUBLIC WORKS UTILITY VEHICLES/TRUCKS FOR USE BY THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$972,550, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF GASOLINE TAX REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO NMSA 1978, SECTION 7-1-6.9, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF GASOLINE TAX TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Resolution unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing county under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governmental Unit wishes to pledge the Gasoline Tax Revenues, defined below, to the repayment of the Loan Agreement Payments due under the Loan Agreement; and

WHEREAS, the Governing Body has determined pursuant to the Act that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and



WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose to secure the payment of any obligation, which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues, and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the full faith and credit of the Governmental Unit or the State; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than the Pledged Revenues, no tax revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Section 4-62-1 through 4-62-10, NMSA 1978, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the County Clerk, this Resolution and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Resolution to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF LUNA COUNTY, NEW MEXICO:

Section 1. Definitions. As used in this Resolution, the following capitalized terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the general laws of the State, Sections 4-62-1 through 4-62-10, NMSA 1978, as amended, Sections 7-13-1 through 7-13-18 and 7-1-6.9, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Resolution.

“Aggregate Annual Debt Service Requirement” means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means, in the case of the Governmental Unit, Chair, Vice Chair, Budget and Procurement Director and County Clerk, and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Project.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet attached as Exhibit “A” to the Loan Agreement, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

“Expenses” means the cost of issuance of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the County Commission of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means Luna County, New Mexico.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Resolution and not solely to the particular section or paragraph of this Resolution in which such word is used.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Intercept Agreement” means the Intercept Agreement, between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on Exhibit “A” to the Loan Agreement.

“Loan Agreement Reserve Account” means the loan agreement reserve account established in the name of the Governmental Unit funded from the proceeds of the Loan Agreement and administered by the Trustee pursuant to the Indenture.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account Deposit on Exhibit “A” to the Loan Agreement, which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“NMSA” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Parity Obligations” means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet attached as Exhibit “A” to the Loan Agreement.

“Pledged Revenues” means the Gasoline Tax enacted pursuant to Section 7-13-1 through 7-13-18, NMSA 1978, as amended, and distributed to the Governmental Unit, which is utilizing the Project and benefiting from the Loan Agreement, which distribution is made monthly by the Distributing State Agency.

“Processing Fee” means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on Exhibit “A” to the Loan Agreement.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

“Project” means the project described in Exhibit “A” to the Loan Agreement.

“Resolution” means this Resolution No. 19-53 adopted by the Governing Body on October 10, 2019, approving the Loan Agreement and the Intercept Agreement as amended from time to time.

“State” means the State of New Mexico.

“Trustee” means the BOKF, NA, Albuquerque, New Mexico, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and the Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the costs of acquiring the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of and the public served by the Governmental Unit.



F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in Exhibit "A" to the Loan Agreement, the Governmental Unit does not have any outstanding obligations payable from the Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

I. Pursuant to Section 7-1-6.9, NMSA 1978, as amended, the Governmental Unit receives Pledged Revenues from the Distributing State Agency.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$972,550, plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the acquisition of the Project; (ii) fund the Loan Agreement Reserve Account; (iii) pay the Processing Fee; and (iv) to make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Loan shall be in an original aggregate principal amount of \$972,550, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on May 1, 2020 at the rates designated in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement, as presented at the meeting of the Governing Body at which this Resolution was adopted, are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement, with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the County Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from



the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Resolution and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Resolution or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Resolution, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of Acquisition of the Project.

B. Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account, and the Loan Agreement Reserve Account to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account; (ii) and the deposit of funds in the amount of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account; and (iii) the payment of the Processing Fee to the Finance Authority, all as set forth in Exhibit "A" to the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, Loan Agreement Reserve Account and Finance Authority Debt Service Account and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement.

A. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal, interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

B. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged to, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Resolution. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution, the Loan Agreement and Intercept Agreement,



including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Resolution set out in Section 17 of this Resolution (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Resolution. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Resolution may be supplemented or amended by resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Resolution. This Resolution may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 15. Repealer Clause. All bylaws, orders, resolutions, and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Chair and County Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Resolution (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Resolution shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Resolution shall be published in substantially the following form:

(Form of Summary of Resolution for Publication)

Luna County, New Mexico  
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. 19-53, duly adopted and approved by the Governing Body of Luna County, New Mexico, on October 10, 2019. A complete copy of the Resolution is available for public inspection

during the normal and regular business hours of the County Clerk, Luna County Courthouse, 700 S. Silver Avenue, Deming, New Mexico 88030.

The title of the Resolution is:

LUNA COUNTY, NEW MEXICO  
RESOLUTION NO. 19-53

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN LUNA COUNTY, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF UP TO \$972,550 FOR THE PURPOSE OF PURCHASING AND EQUIPPING PUBLIC WORKS UTILITY VEHICLES/TRUCKS FOR USE BY THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$972,550, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF GASOLINE TAX REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO NMSA 1978, SECTION 7-1-6.9, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF GASOLINE TAX TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS OCTOBER 10, 2019.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Linda Smrkovsky, Chair

[SEAL]

ATTEST:

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk



Commissioner \_\_\_\_\_ then moved adoption of the foregoing Resolution, duly seconded by Commissioner \_\_\_\_\_.

The motion to adopt said Resolution, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

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Those Voting Nay:

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Those Absent:

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\_\_\_\_\_ ( ) members of the Governing Body having voted in favor of said motion, the Chair declared said motion carried and said Resolution adopted, whereupon the Chair and the County Clerk signed the Resolution upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Resolution, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Linda Smrkovsky, Chair

[SEAL]

ATTEST:

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk

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**EXHIBIT "A"**

Meeting Agenda  
of the October 10, 2019  
County Commission Meeting

(See attached)

STATE OF NEW MEXICO  
LUNA COUNTY

I, Andrea Rodriguez, the duly qualified and acting County Clerk of Luna County, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the County Commission of Luna County, New Mexico (the "Governing Body"), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at County Commission Chambers of the Luna County Courthouse, 700 S. Silver Avenue, Deming, New Mexico 88030, on October 10, 2019, at the hour of 10:00 a.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governmental Unit's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of November, 2019.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Andrea Rodriguez, County Clerk

[SEAL]