

**LUNA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**Linda M. Smrkovsky  
Member**

**Barbara L. Reedy  
Chair**

**John S. Sweetser  
Member**

**Wednesday, November 10th, 2021  
10:00 a.m.  
Agenda  
Regular Meeting  
Luna County Courthouse**

Meeting ID: [meet.google.com/wcm-iczv-vnr](https://meet.google.com/wcm-iczv-vnr) To dial in: 414-909-4972 PIN: 939 182 389#

**1. Call to Order:** Chair Reedy 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. Regular Meeting: October 14, 2021

**MOTION AND ROLL CALL VOTE**

**5. Service Awards/ Retirement:**

- |                |      |          |
|----------------|------|----------|
| ● Tanya Ortiz  | CASA | 5 years  |
| ● Mary Gooding | LCDC | 20 years |

**6. Presentations:**

- Community Service Plaque to USCBP- Chris Brice
- Research & Polling Redistricting Presentation- Brad Morrison (Virtual)
- Veterans Debriefing Program- Jennie Becerra
- WNMU Vocational Programs- Manny Rodriguez

**7. Elected Officials' Report:**

- Assessor
- Clerk
- Treasurer
- Probate Judge
- Sheriff
- Commissioners

**8. County Manager's Report:**

**9. Indigent Claims Report:**

- a. Recess as County Commission, Convene as Claims Board

**MOTION AND VOTE**

- b. Presentation of Claims Report by Joanne Hethcox

- c. Consider Claims dated November 10, 2021 \$33,702.88

**MOTION AND VOTE**

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

**MOTION AND VOTE**

**10. Community Support Reports:**

- 11. Public Comment:** The Public has the opportunity to provide comments at this time pertaining to items on the agenda only. Please be advised that this is not a question and answer period. Your comments specific to the agenda items will be limited to three minutes unless the Board of County Commissioners requests more information. The time limit and opportunity to speak is given in an effort to allow public input on business matters of the County to move the agenda forward in a prompt yet efficient manner. Comments will not be allowed on individual agenda items as they are discussed by the Commissioners during new business.

**12. Public Hearing:**

- a. Ordinance 98: Animal Control  
**PUBLIC HEARING**  
**MOTION AND ROLL CALL VOTE**
- b. Ordinance 108: Redistricting of County Commission Districts based on 2020 Census  
**PUBLIC HEARING**  
**MOTION AND ROLL CALL VOTE**
- c. Utility Variance Request: 5495 Highway 549 SE  
**PUBLIC HEARING**  
**MOTION AND ROLL CALL VOTE**

**13. Call for Ordinance:**

- a. Resolution 21-69: Call to Amend Ordinance 86; Adopting the Local Economic Development Plan to Implement the Authority Provided by the New Mexico Local Economic Development Act  
**MOTION AND ROLL CALL VOTE**

**14. Consent Agenda:**

- a. Accounts Payable: \$1,199,573.31
- b. Payroll: \$1,152, 415.65  
**MOTION AND ROLL CALL VOTE**

**15. New Business:**

- a. Resolution 21-70: Budget Increases  
**MOTION AND ROLL CALL VOTE**
- b. Resolution 21-71: Budget Transfers  
**MOTION AND ROLL CALL VOTE**
- c. Resolution 21-72 Colonias Infrastructure Project Fund Agreement- (CIF-5537 Keeler Farm- People's Water Coop)  
**MOTION AND ROLL CALL VOTE**
- d. Resolution 21-73 Colonias Infrastructure Project Fund Agreement (CIF-5538 Rockhound street drainage improvements)  
**MOTION AND ROLL CALL VOTE**
- e. Resolution 21-74: Amendment to Resolution 17-35; Procurement Policy  
**MOTION AND ROLL CALL VOTE**
- f. Resolution 21-75: Resolution Supporting the New Mexico Counties 2022 Legislative Priorities  
**MOTION AND ROLL CALL VOTE**
- g. Amendments to Collective Bargaining Agreement- AFSCME LCSO #1764  
**MOTION AND ROLL CALL VOTE**
- h. Budget for Redistricting and GPS  
**DISCUSSION ONLY**

**16. Certification of Canvass Results for the Regular Local Election 2021:**

**MOTION AND ROLL CALL VOTE**

**17. Executive Session:**

Executive Session pursuant to Section 10-15-1H(2) NMSA 1978 pertaining to limited personnel matter

**MOTION AND ROLL CALL VOTE**

**18. Executive Session Action Taken:**

**MOTION AND ROLL CALL VOTE**

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

County Offices will be closed on:

November 11th, 2021 in observance of Veterans Day

Half a day on November 24th, all day on November 25th & 26th for Thanksgiving

Regular Commission Meeting: December 9, 2021 at 10:00 a.m.

**20. Adjourn:**

**MINUTES  
REGULAR MEETING  
LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS  
Thursday, October 14, 2021**

**BE IT REMEMBERED** that the Luna County Board of County Commissioners met in regular session at 10:00 a.m. on Thursday, October 14, 2021 in the Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting any and all business to come properly before the Board. Due to the Covid-19 Pandemic and the Governor's Orders regarding social distancing, the commission meeting was also conducted via teleconference and webcasting.

**The following staff and elected officials were present:** County Manager Chris Brice, Assistant to the County Manager Yossie Nieblas, Administration Assistant Lupita Hernandez, Deputy Clerk Pilar Salcido, Clerk Berenda McWright, Chief Deputy Clerk Leslie Nabours, Grants Administrator Sarah Estrada, Probate Judge Diana May-Diaz, Chief Deputy Assessor Isabelle Enciso, Treasurer Kristie Hobbs, DWI Program Coordinator Edith Vasquez, Sheriff Kelly Gannaway, Captain Michael Brown, Road Department Director David Bailey, IT Technician Joseph Apodaca, LCDC Director Lee Cook, Economic Development Community Director Christie Ann Harvey, Community Development Director Premal Patel, Community Development Liaison Mary Mackey, and County Attorney Charles Kretek. Other directors and elected officials were present virtually.

**CALL TO ORDER:** Chair Reedy called the meeting to order at 10:00 a.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, Chair, District 1**

**Linda M. Smrkovsky, District 2**

**John S. Sweetser, District 3**

**MINUTES:** Upon a motion made by Commissioner Smrkovsky and a second by Commissioner Sweetser the Minutes for the Regular Meeting of September 9, 2021, and the Special Meeting of September 20, 2021 were unanimously approved following a roll call vote.

**SERVICE AWARDS:** Chief Deputy Assessor Isabelle Enciso presented to Alma Arias her five years of service anniversary pin. County Manager Chris Brice stated the award for Tanya Ortiz from CASA will be presented at next month meeting.

**PRESENTATIONS:**

- Restrictive Housing Quarterly Report: LCDC Director Lee Cook presented the restrictive housing quarterly report. Mr. Lee stated they had four detainees who met the restrictive housing requirement. The first one was a 45-year-old white male who was being monitored by medical personnel daily. It was at the request of the medical personnel that the detainee be kept in a medical cell for observation. The second one is a 22-year-old white male detainee. He was a new intake and was immediately placed in Covid 19 quarantine. The third was a 33-year-old white male detainee also a new intake and immediately put into Covid 19

quarantine. The fourth was a 27 year old white male a new intake again and placed in Covid 19 quarantine.

- Presentation of the 9/11 Flag by Teresa Aguilera. Ms. Aguilera showed a video created and edited by LCDC Lee Cook, and Jarran Duty from Above Average Graphics. Ms. Aguilera presented to the Board of Commissioners the flag which was raised and lowered during the Luna Counties' 9/11 event held at the Courthouse. Ms. Aguilera confirmed that a bench is being donated to Luna County in memory of Sam Baca in honor of the 9/11 victims.

**ELECTED OFFICIALS REPORTS:** Chief Deputy Assessor Isabelle Enciso reported they have submitted the abstract and warrant to the property tax division for 2021. All tax rates have been entered into the system and are ready for the treasurer's office to run their tax roll. Ms. Enciso stated they are getting ready to complete the final permits for 2022, and have worked upmarket to get started on calculating for the 2022 year appraisal. The County Service Specialist staff are busy processing deeds, changes of address, affidavits, tax levies, and helping customers in the office, online, and on the phone. The GIS flood plain 911 rural addressing department is continually updating the maps for 2021, processing UPC numbers, deeds, flood plain inquiries, data inquiries, new addresses, new address designation letters, and are continuing to work on city limits subdivision on the GIS map. Online services are available and the staff is ready and able to help.

Clerk Berenda McWright reported for the month of September the office processed 11 in-person registrations, 8 through the mail, 23 removed, and 91 online. Luna County currently has a total of 12,601 active registered voters. Of that 5,223 are Democrats, 4,217 are Republicans, 108 are Libertarians, and 3,053 are declined to state and other. A total of 506 documents were recorded in the Clerk's office. Four new business registrations were issued in September with no businesses canceling their registration with a total of 229 businesses are currently registered in Luna County. The lodger's taxes collected were \$102.97 for July and \$1,936.62 year to date. They have processed minutes for two commission meetings and processed fourteen records request over e-mail. The ongoing projects are early voting which has started in the Clerk's office for the regular local election. There have been to date 24 early voters and they have mailed out eleven applications for absentee ballots. . Early voting starts at the Learning Center on the upcoming Saturday and Election Day is November 2<sup>nd</sup>. The ballot boxes for returning absentee ballots have been conveniently located outside the Clerk's office, Mimbres Valley Learning Center, and at City Hall.

Probate Judge Diana Diaz reported that year to date there are a total of 50 marriage licenses issued, 121 probates opened. Ms. Diaz stated they will soon be conducting weddings indoors. They have been conducting weddings outside as of 2020. Judge Diaz reported that Senate Bill 352 will be re-introduced to allow judges to visit and do business in another county. She asked that if they see their Senators or the House of Representatives encourage them to get that bill passed.

Treasurer Kristie Hobbs reported they are getting ready to mail out tax bills. Ms. Hobbs stated they used a new company for tax bills this year and they will be able to do e-billing this year. Anyone willing to sign up for e-billing will have the opportunity to do that. The bills will also look different, the new tax bills will include all properties even in different counties if they use the same company. The bills will all be sent out in one envelope, and all billing history for the past 5 years will be included. Taxes will be due November 10<sup>th</sup> and delinquent after December 10<sup>th</sup>.

Sherriff Gannaway submitted his report for September. The criminal report shows no homicides or rapes. Assaults, burglaries, and larceny are up. The Non-criminal civil report was up and accidents were the same as last month, no DWI's were reported. Grand totals for both criminal and non-criminal are up. Sheriff Gannaway stated he attended the graduation for Deputy Paredes in Dona Ana last week so he is now a certified law enforcement officer. They are in the process of filling two positions one for the HIDA task force investigator and one for the school resource officer. Two new units are being outfitted right now and will be in soon.

Commissioner Smrkovsky reported that she attended the New Mexico Counties Board meeting last week and they did go over upcoming legislative priorities.

**COUNTY MANAGER'S REPORT: COUNTY MANAGER'S REPORT:** County Manager Chris Brice reported:

- Dispatch: There were 7,059 calls with 233 warrants.
- LCDC: There was a total of 412 people booked and 173 released. NMC is keeping close track of how many bookings and the numbers are being taken to court through the Supreme Court of New Mexico. Arrests should not be taking place for minor violations due to Covid 19 but the directive seems to have slipped some in the recent months. Marshall's are 238 which has continued to stay stable for the last couple of months.
- Road Department: A total of 4,254 tires were received. They bladed over 242 miles of road in the last month. They are rapping up the Colonias in the Rockhound area there are still a couple of small issues that the contractor is taking care of. The Columbus Industrial Park grant was awarded \$4.8 million with another \$200 thousand for the administration of it. A little over \$5 million to repave some of the roads in the Industrial Park in the Columbus area and to include drainage and some other things. They are looking to go with a concrete vs. asphalt. They are still working on Hermanas, Solana, 8<sup>th</sup>, and La Bajada streets. They have been working with the Bureau of Land Management (BLM) on some flooding projects which they will get to with the company redoing our hazard mitigation plan. If they are in the hazard mitigation plan (which ours was 9 years overdue) the odds of you getting funding to fix those hazard issues are a lot better through grants. They will make sure to keep them updated on any projects we have going on. They are still working on flood water damage at Hermanas, Lewis Flats, Rockhound, and Columbus Roads.
- Budget and Procurement: The GRT continues to be a little bit higher. This could be due to online spending. The cost of goods for construction has gone up quite a bit so that may be part of it. Joanne continues to work on the budget with OpenGov so that next year we can be free online with the availability of the Directors and Elected Officials to put their input in online. The Commissioners would be able to look at it anytime they want remotely from anywhere. It is a lot of work and a long process to be put in from a spreadsheet into a software program.
- Human Resources: They hired 2 detention officers, an advocate, 4 concession workers, and a bowling attendant. They still have a Detention Officer, Dispatcher, Road Truck Driver. Interviews are being conducted with the LCSO Investigator and the School Officer. They are hiring a new Maintenance Supervisor out at the detention center.

- Starmax: Sales for the month of September are \$25,000. The air conditioners have been repaired they do not have the staff to open the theatres. They are working on the kitchen remodel drawings when they move to the train depot to make that the sports bar area.
- Emergency Management: They are still monitoring Covid-19 spread, currently we are at 6.33% which is up from 4.37%. The hospitals are doing fine. They monitor the border situation all the time. The Secretary with Homeland Security Emergency Management was here a couple of weeks ago just to get a feel for what things are like here on the border. The Border Patrol is doing a phenomenal job at keeping everything under control. They are still waiting on Title 42 to either go away or remain in place as it goes through the courts. There is a good feeling that it will go away at some point soon. At that point, we may have a whole new set of problems. Currently, there is 82.2% of the population at least has one Covid shot, and 74.7% is fully vaccinated. Vaccinations are being done twice a week in Deming and once a month in Columbus. The Hazard Mitigation Plan is on track and should be wrapped up soon. Colors United did volunteer and house some Haitian refugees here which were in some of the hotels.
- Safety and Risk: Joanne Moorman tracks all the Covid 19 and reports everything to the State. She is doing RAP training. The process for vehicle inspections is still underway right now and she is still doing road-ready and all of her training.
- Luna County Fire: The volunteer fire department had 18 fire calls. They went to the NM Fire Chiefs conference in Ruidoso which was extremely informative.
- DWI: They had five DWI arrests. They currently have 94 misdemeanor DWI offenders and they screen 60 clients for substance abuse disorders.
- Community Health and Well Being: The healing house had twelve clients sheltered, 29 in the batters intervention program, 15 group counseling training were held. They had a 's domestic violence support group life skills curriculum. Contracts were sent out mid-October of \$50,000 from CDC and Vaccine Equity. Parents as Teachers are serving 145 clients in Luna and Hidalgo Counties. They donated four car seats and 294 home visits were done. Juvenile Justice, we got six families enrolled in Strengthening Families. Girl circle had 11 participants. Adult Drug Court had 11 participants, and SWAG had 13 participants. This is Domestic Awareness month. The ceremony will be held next Wednesday.
- IT: There were a total of 703 work orders completed for the month. There were 1,808 attacks on the networks.
- Planning: The donation process is going well. The Dollar General on Columbus Highway is opened. They are assisting with a Dollar General in the Columbus area. The ICIP is getting finalized and wrapped up.
- Maintenance/Projects: They have been doing a lot of painting and cleaning up. The flag was again put on top of the Court House. They did environmental analysis and testing which is the final thing to be done with the CBDG. That came back negative for asbestos so we should be moving to the RFP phase very soon for the construction work to be done very soon. They did get approved for the additional \$700,000 from the State Board that the County had asked for because of the cost of construction materials going up. We should have plenty of money to do the entire project now. Some of the big things being worked on within the Manager's Affiliate are the is the State through Statue mandating that Counties support District Court by

having the building built, the County pays the utilities. The Health Department and the District Attorney's office are also the Counties' responsibilities for maintaining the buildings and paying for the utilities. District Attorney Mike Renteria and Mr. Brice is lobbying the State for money to help with the expenses of this financial responsibility. New Mexico Counties (NMC) are going to the State and asking them for financial help as they have put these financial mandates on the Counties. City Manager Aaron Sera and he both submitted a combined budget request for the HB2 monies. The combined budget request was submitted a couple of weeks ago to Representative Sweetser and Senator Diamond. Some of that is for the initiative Mr. Sera has going on the West end of town. One of the other requests was for the joint emergency operation center to fund that, and then the typical roads. We will also individually go out for Capital Outlay requests. The window is opened for Capital Outlay requests through the Legislative Session as of October 6<sup>th</sup>, and it closes January 13<sup>th</sup>. All those requests have to be in line with our ICIP so that there will be no surprises. The maintenance department continues to work on the Build Back Better monster grant. They are pretty much winding down on the application for phase one which is the vision of what they would like to do. This includes some work at the Columbus Port of Entry the Industrial Park in that area with some cold and dry storage, road, drainage, water, fire hydrates, and all the infrastructure that would be required to have a healthy and robust industrial park. As well as working with one of the local farmers who is processing up just outside city limits here and making the finished product of green chili and salsa and his expansion endeavors. We are working with Western NM as one of the key entities to grant for training and setting up training for the vocational trades needed in the community. Part of their joint request with Aaron is also the expansion of the Learning Center to help them set up for trade schools. A fence was put up behind the Learning Center on the East side of the building for the welding class.

- Economic Development: Christie Ann Harvey reported on the recent economic development activity. Lots of opportunities to capture at this time. They are working with COG on the development of affordable housing. All the public comment for that plan has taken place. The COG Emily Blakavich is working on that completion. They expect both that plan as well as the comprehensive plan to be done sometime in the spring quarter. They have one remaining section left on the comprehensive plan to attend to and that will be the week after next which is the transportation section of it. As they have gone through this plan they found a great deal of bullet plate language that was previously put in there that has no meaning to us nor does it have any connection to what we are doing. So this plan is being put together in a way that truly addresses those things that are of importance to us and it provides a road map for the future they want this to be a living document and that we can pick up and follow the activities that we can follow here as we continue to move Luna County forward. Ms. Harvey stated she continues her attendance at the City Council and the Village Trustee meeting representing the Counties' interest and updating those respective parties on what the activities are as appropriate. She had the pleasure of attending the COG Board meeting last month with Commissioner Reedy as well as Sara Estrada. Mary and she had the honor of participating in a bi-national ceremony in Palomas several weeks ago with many dignitaries from the State of Chihuahua as they baptized a very new colorful sign which stands at the entry point to Palomas. She encourages the public to go see it. She has continued her work with Don Kyle on his conservancy project. Don is due to have final approval from the City at the next Council meeting. Once that is done he will be able to continue with his purchase of the Murdock Farm as well as the appropriate water rights out there. She has also introduced Don to Western

NM Votec so that when his approval goes through he can participate being able to provide hands-on welding projects for the students in the class. They also anticipate that will lead to other activities with students engaged in the spring. They have set up multiple meetings with Tony Marib of Artisan Guild Construction as they continue to explore avenues and attempt on bringing a market-rate apartment complex to this city. Tony is a highly qualified builder, and an incredibly good builder but were looking for is a developer that can fund this project and possibly utilize Tony in his experience as he builds it out. Later this afternoon she has a meeting with a couple of individuals as they explore the possibility of a new developer whom can overtake this project and fund it for them. She is continuing her work with a new Western NM University Director Manny Rodriguez is an exceptional gentleman whom she has had the pleasure of meeting in July. He came here he asked what the problems were from the County's point of view with the University and if they felt less supported in their efforts. She explained to him the situation that they put out calls repeatedly for Votec but had not received assistance. The day Mr. Rodriguez showed up and assisted all of them, brought in an instructor by the name of Jimmy Ortiz who has a welding program that is underway and successful with over 20 students in it. They are finished with the classroom education and they are actually down to welding now. They have plans to bring in later this year phlebotomy, GED, Spanish, English, and English as a second language classes. They understand that they will be going into electrical, solar, mechanics, and other vocational activities that are connected with the construction trade. They define areas where we need a great deal of help at this time and believe these areas of focus will help the County move ahead to build Luna County. The Build Back Better regional challenge is an ADA program that is designed to assist communities nationwide and their efforts as they build back better by accelerating economic recovery in burdened, sustainable and resilient economies that can weather future disasters should that happen. This is a \$1 billion program that is broken up into two phases. Phase one would include application, the letter of intent is going to be due this month on the 19th and it consists of an overall narrative in which you describe the clusters that you want to build. This could be agricultural, transportation, and energy multiple things. What we have decided here is the cluster that we want to focus on would be agricultural since that is our mainstay here. Chris Brice also mentioned the majority of this activity will be happening at the port. We have an unusual opportunity there as we have only a 24-hour port and is agriculturally based. We are the only place in this State that even with the Santa Theresa it does not have the gift so the idea is to focus down here and take advantage of the new port that has been built as well as the increased traffic that comes across there is so much we can grab and the opportunity to build out better. They had Wilson & Company's engineers helping us with the writing of this. The team has been meeting almost daily for weeks. They feel optimistic that they have a good opportunity because of this unique location and frankly the poverty level here in the County needs help. The second part of this grant would be coming out on March 15<sup>th</sup> of next year. If the County is successful in that there can be anywhere from \$25 to 100 million designated for the construction of these projects. The first phase mentioned would land if the County is chosen would get \$500,000 would be for the initial engineering and build-out of all the various clusters. Don Kyle is from Phoenix Arizona and the President of Almond companies which is a very large company. They have a desire to create a land that can be used and passed on for private use but with public aspects to it. The public aspects are the creation of at least 40 acres of land devoted to the FFA and the 4H upon where Mr. Kyle will supply all materials, fund the entire thing and allow those students to build out shell barns and places where they could call their own have their mentors there and participate in the actual construction of the nature conservancy.

**INDIGENT CLAIMS REPORT:** Upon a motion by Commissioner Smrkovsky 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 & Procurement Director Joanne Hethcox reported that for September we had one claim of \$165.75. The gross receipt tax (GRT) received \$74,076.01. The balance for the Indigent Claims Fund total is \$1,619,493.67 as of September of that \$730,536.17 is encumbered. Ms. Hethcox explained that a couple of years ago we allowed where we can pay physicians' bills that are associated with the hospital stay. She further explains we can pay to any hospital in the State of New Mexico. County Manager further explains it can be either a doctor from this hospital can refer an individual to a specialist or somewhere over there. Or if they were in Las Cruces and something happened to them and they were taken to the hospital that would cover it as well. Chair Reedy asked for a motion to consider the claims dated September 9th. Commissioner Smrkovsky made a motion to consider the claims as presented by Joanne Hethcox for September. The motion was seconded by Commissioner Sweetser and approved unanimously.

Commissioner Smrkovsky motioned to recess as a Claims Board and reconvene as a County Commission. Commissioner Sweetser seconded the motion which carried unanimously.

**COMMUNITY SUPPORT REPORTS:** Executive Director of Deming Mainstreet Chelsea Evan gave an update on activities including the upcoming Halloween event.

Executive Director Debbie Troyer Deming-Luna County Chamber of Commerce gave an update on recent activity.

**PUBLIC COMMENT:**

A public comment period was entertained to gain public input regarding items on the Agenda only. No relevant public comment was forthcoming.

**CALL FOR ORDINANCE:**

- a. Resolution 21-68; Call to adopt Ordinance 108: Redistricting of County Commission Districts based on 2020 Census: County Attorney Chuck Kretek explained this is Resolution and Ordinance is based on the 2020 Census. He further explained that with this call for the ordinance so we will be ready to re-district as we already know we will need to. They have received an initial report saying a re-districting is necessary as Luna County has gained 322 people in the last 10 years almost all in one district. If Ordinance 108 is approved the Board is allowing County Manager Chris Brice to contract with one of the two companies to help with information on separating areas for re-districting. They will then draft that information and present it to the Board. This should be done before the end of the year. The precinct re-districting has already been done, we are ahead of the curve on that. Commissioner Smrkovsky motioned to approve Resolution 21-68; Call to adopt Ordinance 108. The motion was seconded by Commissioner John Sweetser and carried following a roll call vote.

**CONSENT AGENDA:** Upon a motion from Commissioner Smrkovsky and a second by Commissioner Sweetser the Consent Agenda was approved unanimously following a roll call vote.

1. Accounts Payable: \$1,262,401.81
2. Payroll: \$1,127,618.31

**NEW BUSINESS:**

- a. **Resolution 21-64: Budget Increases:** Budget and Procurement Joanne Hethcox explained the major change is that the Parents as Teacher program has gone from a combined funding source of Federal and State all into Federal. They have also received an additional \$260,000 to continue with the program. Other budget increases would be due to the increase in gross receipts the Sheriff's department was able to increase their 508 capital outlay to be able to buy a couple of more units. The detention center had some line items that we know are going to be short due to the increased medical cost so a budget increase was done for them as well. Commissioner Smrkovsky motioned to approve Resolution 21-64: Budget Increases. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.
- b. **Resolution 21-65: Budget Transfers:** Budget & Procurement Joanne Hethcox explained the transfer of the monies is the Parents as Teacher grant received was moved to combine the grant. Commissioner Smrkovsky motion to approve Resolution 21-65: Budget Transfers. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.
- c. **Resolution 21-66: Requesting a Change to the PERA Return to Work Provisions:** County Manager Chris Brice explained that by approving Resolution 21-66 they would be asking the State to take a look at changing the parameters at how people can come back to work without losing their retirement. Commissioner Smrkovsky stated she understands the need for this but also sees the need for certain language to be added so that promotional opportunities for individuals are not missed due to an individual retiring and receiving PERA retirement monies then staying in their position which would also be getting a salary (double-dipping). An option also discussed is to hire a contractor until the positions are filled permanently. Mr. Brice stated the problem with that is that the PERA reviews those contracts and if they are similar to the line of work they were in they will not allow it. Commissioner Smrkovsky said that is why when bringing someone back it should not be for the same position. She also stated that it should be filled from within or from outside and if you still need that expertise it is there for you until the new person is trained. Mr. Brice explained these resolutions and petitions are to try to get the State to open up conversations to return to work. Commissioner Smrkovsky motioned to approve Resolution 21-66: Requesting a Change to the PERA Return to Work Provisions. Commissioner Sweetser The motion was seconded by Commissioner Smrkovsky and carried unanimously following a roll call vote.
- d. **Resolution 21-67: Intergovernmental Transfer of Property:** County Manager explained that about a year and a half ago the County agreed to purchase an ambulance for the Columbus Fire department. They have received this ambulance and it was turned over to the Columbus Fire department recently. They turned it over to the Mayor of Columbus on an in-perpetuity basis. Commissioner Smrkovsky motioned to approve Resolution 21-67; Intergovernmental Transfer of Property for Columbus. Commissioner seconded the motion which carried unanimously following a roll call vote.

- e. **Amendments to Collective Bargaining Agreement – AFSCME LCSO # 1764:** Commissioner Smrkovsky motioned to **table** Amendments to the Collective Bargaining Agreement. Commissioner Sweetser seconded the motion which carried unanimously following a roll call vote.
  
- f. **SunZia Transmission Line #1 Community Benefits Agreement:** County Manager Chris Brice explained the SunZia transmission lines the benefits agreement to the County for the use of the property which is much like a franchise agreement where they pay us a certain amount of money with it dedicated to the user for the County for every mile of transmission line they put through the County. We have both the first one and the second one covered in this agreement. Commissioner Sweetser motioned to approve the SunZia Transmission Line #1 Community Benefits Agreement. The motion was seconded by Commissioner Smrkovsky and carried unanimously following a roll call vote.

**EXECUTIVE SESSION:**

**Executive Session pursuant to Section 10-15-1H (7) NMSA 1978 – pertaining to pending litigation update:** Commissioner Smrkovsky motioned to go into Executive Session pursuant to Section 10-15-1H (7) NMSA 1978 – pertaining to pending litigation update. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.

The Commissioners went into Executive Session at 11:25 a.m. and returned from Executive Session at 12:07 p.m.

Commissioner Smrkovsky moved to return from Executive Session pursuant to Section 10-15-1H(7) NMSA 1978- where no other matters were discussed other than discussing pending litigation update. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.

Commissioner Smrkovsky motioned to allow the County Manager Chris Brice to write a letter regarding the opioid litigation settlement. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.

Commissioner Smrkovsky motioned to recommend that the funds to be received through the GRT claim with the City of Albuquerque, and other entities be put into the LEDA fund as the GRT funds and that is what it is funded with. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.

**UPCOMING MEETING:** Chair Reedy announced the following upcoming meetings.

Domestic Violence Awareness Event: October 20, 2021 6:00pm – 8:00 p.m.  
Regular Commission Meeting: November 10, 2021 at 10:00 a.m.

**ADJOURN:** The meeting was adjourned by Chair Reedy at 12:09 p.m.

**ATTEST:**

**LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS**

\_\_\_\_\_  
**BERENDA MCWRIGHT, LUNA COUNTY CLERK**

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

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

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

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

# Indigent Hospital Claims Office

Chris A. Brice, County Manager

IHC Board Meeting November 10, 2021

Month	Number	Amount	Number	Denied
January		0		\$0.00
February		7		\$21,048.89
March		2		\$782.93
April		2		\$1,036.36
May		1		\$707.68
June		0		\$0.00
July		3		\$2,562.06
August		17	4	\$55,576.99
September		1		\$165.71
October		9		\$33,702.88
November				\$0.00
December				\$0.00
<b>Total</b>		<b>42</b>	<b>4</b>	<b>\$115,583.50</b>
This Month's Total				Mimbres Memorial Hospital \$29,107.54
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 \$4,595.34
<b>Total</b>				<b>\$33,702.88</b>
Year to Date Total				Mimbres Memorial Hospital \$105,851.37
Year to Date Total				All Other Hospitals \$273.27
Year to Date Total				Deming Fire Dept./EMS \$0.00
Year to Date Total				All Other Services \$9,293.15
<b>Total</b>				<b>\$115,417.79</b>
Care of Prisoners This Month - Not including SNCP Funds				\$254,687.87
Care of Prisoners Year to Date Indigent - Not including SNCP Funds				\$1,141,800.23
Care of Prisoners Year to Date Inmate Prescriptions/OTC Meds				\$60,862.31
Care of Prisoners Year to Date Dr. Bills				\$9,464.00
<b>Total Cost of Care of Prisoners Year to Date</b>				<b>\$1,212,126.54</b>
Monies Received - October 2021				\$76,313.16
Balance in IHC Fund as of October 31, 2021				\$1,847,160.30
Encumbrances as of October 31, 2021				\$730,701.88
		Date	Amount Approved	Amount Denied
	Signatures	11/10/2021	\$33,702.88	\$0.00
	Barbara L. Reedy			
	Linda M. Smrkovsky			
	John S. Sweetser			



**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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## 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, or 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 RESCUES 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 purposes 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** means: 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 a 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 are 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, Luna County 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** means: 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** means: 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** means: any of the following ANIMALS, as defined in Section 28-11-2, NMSA 1978, now or as subsequently amended, including:

**1.2.77.1 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.

**1.2.77.2 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.

**1.2.77.3 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

**1.2.77.4 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 of a female or neutering of a male ANIMAL.

**1.2.81 STERILIZATION DEPOSIT** means: the fee that is charged by the ANIMAL SHELTER as part of and included in the adoption fees when a PERSON RECLAIMS, adopts or RESCUES 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 act, 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 Luna County 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 Luna County 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** ADOPTION fees will be reduced by ten percent (10%) for those choosing to voluntarily using a MICROCHIP IMPLANT their ANIMALS.

**2.3.4** ANIMALS less than six months of age shall be released only upon payment of the ADOPTION fee and STERILIZATION 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 (6) 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 STERILIZATION pursuant to this Ordinance 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 ENCLOSURES), stalls or other secure ENCLOSURES 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 ENCLOSURES 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.

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

**2.4.7** 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.

**2.4.8** 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.

**2.4.9** This provision 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** All STRAY dogs and cats that are that voluntarily have MICROCHIPS IMPLANTED at the OWNER'S expense when RECLAIMED by their OWNER, adopted or RESCUED will receive a ten percent (10%) discount on any fees owed. ANIMAL identification through MICROCHIPS 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 Luna County 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 ENCLOSURES 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 ENCLOSURES 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** ENCLOSURES where an ANIMAL is maintained for periods exceeding twenty-four (24) hours must be of adequate size to prevent overcrowding and allow 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 more than three (3) crates high and must be secured to at least one adjacent wall and crate 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 have 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 unprovoked 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 an 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 six (6) weeks is prohibited and ANIMALS over the age of six (6) 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 on 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 organizations 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. Permit requests will be acknowledged and conditionally granted no later than the next business day and conditioned on any inspections or additional information requests. 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 to 40 ANIMALS – at least once every 6 months;

**5.1.2.3** 41 to 60 ANIMALS – at least once every 3 months; and

**5.1.2.4** 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 eight (8) weeks. 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 for cause or upon receipt of a credible complaint.

**5.1.9** KENNELS must be registered and permitted annually and inspected for cause or upon receipt of a credible complaint.

**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.

## **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;

**5.2.3** Indicate whether or not the Owner agrees to a MICROCHIP IMPLANT, thereby entitling the Owner to a ten percent (10%) discount on any fees due and owing.

### **Section 5.3 Fees**

Fees for licenses, PERMITS as required and 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 mistreatment.

**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:

- A complete description of the ANIMAL and photo;
- The manner, date and location of its acquisition;
- The date, manner, and place of IMPOUNDMENT;
- The IMPOUNDMENT number; and
- 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 Luna County 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 Luna County 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 of 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 Luna County 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 Luna County 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 Luna County 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 New Mexico State law. If an officer receives a COMPLAINT of a violation, or observes a violation, he/she may only enter the property if such entry is done in conformance with the above constitutional requirements. Where legally RECOGNIZED exigent circumstances exist, per existing Federal or New Mexico 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 Luna County 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 (6) months or both.

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

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

Set forth each specific violation.

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

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.

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 (1) 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.

### **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 (10) 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 LUNA 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. A decision shall be 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 (10) 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 LUNA COUNTY SHERIFF, or his designee, LUNA COUNTY Code Enforcement Officers and ANIMAL CONTROL OFFICERS shall be responsible for the enforcement of this Ordinance. The LUNA COUNTY 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 12<sup>th</sup> DAY OF AUGUST, 2021.**

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

**ATTEST:**

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

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**Berenda McWright,  
County Clerk**

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

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

**LUNA COUNTY, NEW MEXICO**

**ORDINANCE 108**

**LUNA COUNTY REDISTRICTING ORDINANCE**

**WHEREAS**, Section 1-3-13F, NMSA 1978 requires the Board of County Commissioners to create or redraw the Commissioner Districts so that the number of persons in each district are an nearly equal in population as practical but within five percent (5%) of the mean, as shown in the most recent federal decennial census.

**WHEREAS**, the 2020 federal decennial census established that the Luna County population is 25,427 with the ideal mean for each Commissioner District being 8,427.

**WHEREAS**, as currently drawn the Commissioner districts, attached hereto as Exhibit A, are populated as follows: District 1 = 8,692 with a mean deviation of 2.56%; District 2 = 8,900 with a mean deviation of 5.01%; and District 3 = 7,835 with a mean deviation of 7.55%.

**WHEREAS**, the least disruptive and most equitable manner of adjustment is to extend a portion, located entirely in voting precinct 17, in Commissioner District 3 east across Columbus Highway east to County Club Road between Solana Rd and Monte Vista Road as shown in Exhibit B, attached hereto.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Luna County that the boundaries of the Commissioner Districts in Luna County are hereby adopted as modified and designated on the attached Exhibit B.

**IT IS FURTHER RESOLVED**, that the Luna County Clerk and the County Manager are hereby directed to take all necessary actions to produce for each Commissioner District a legal description and map based on GPS points and thereafter published in the Luna County Clerk's Office and the Luna County website.

**APPROVED AND ADOPTED THIS 10<sup>th</sup> DAY OF NOVEMBER, 2021 BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY, OF NEW MEXICO**

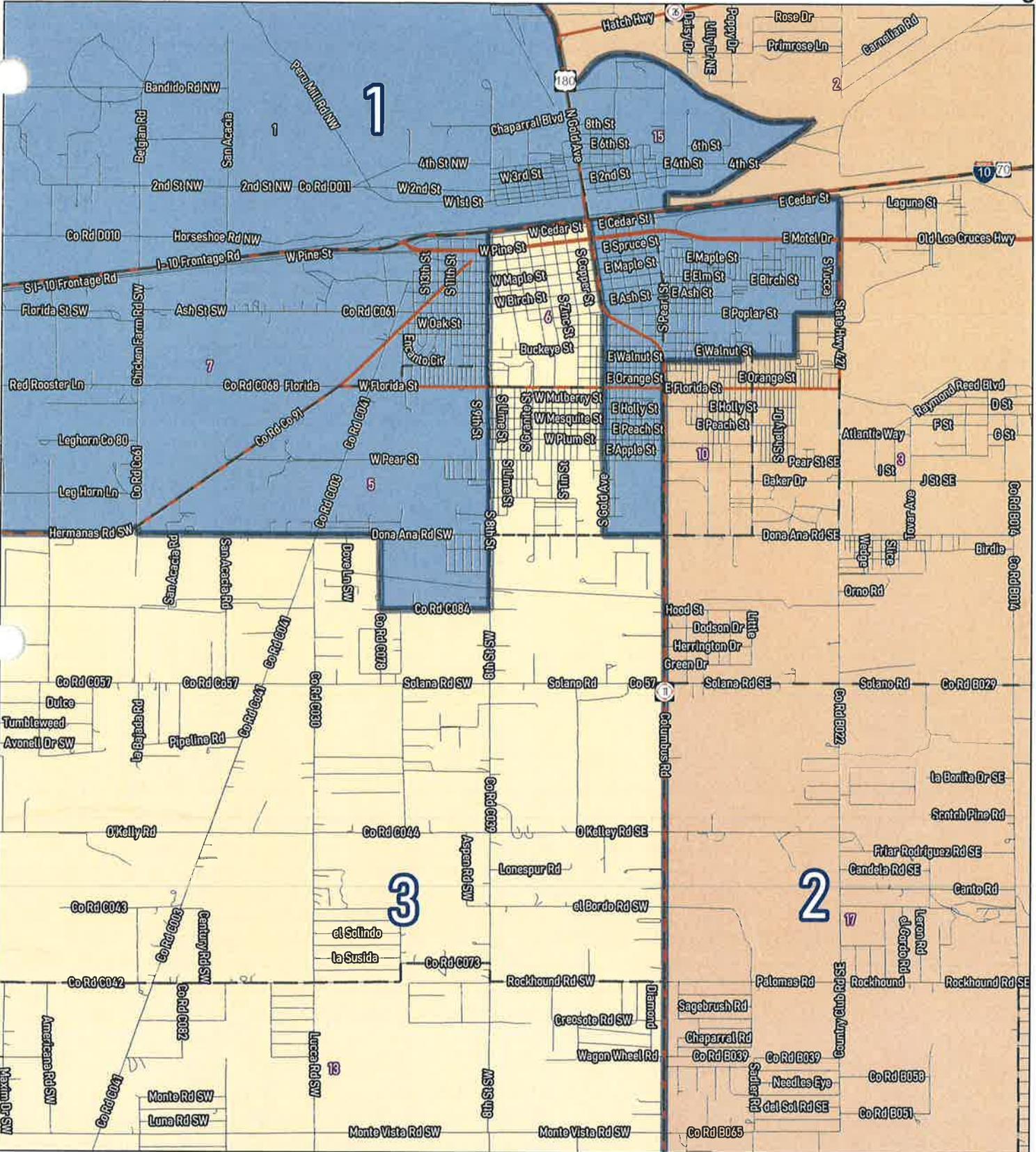
**ATTEST:**

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

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

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

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



Precincts

# EXHIBIT A

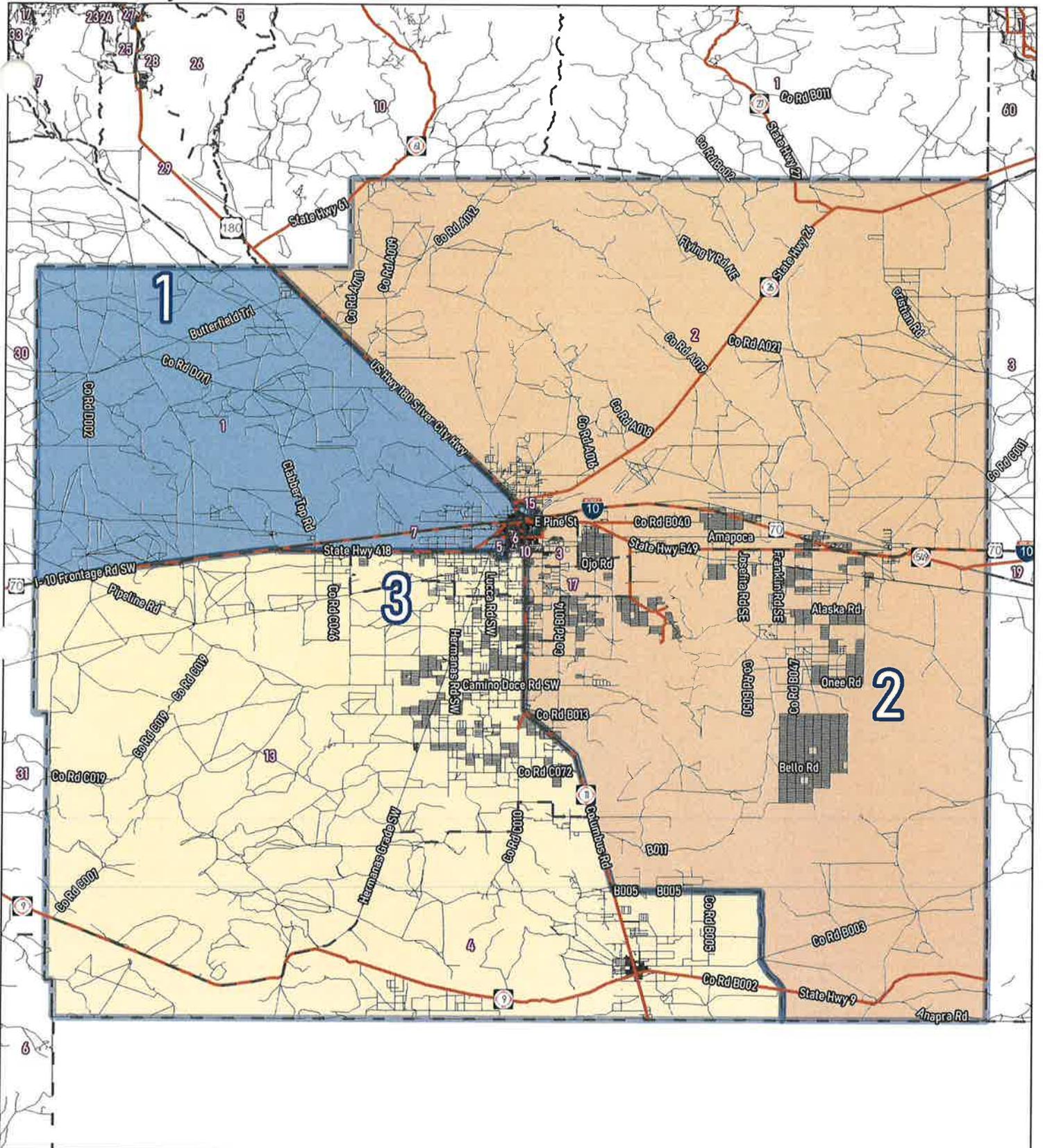


Research & Polling, Inc. distributes this map assuming no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause in reliance upon any maps.

Luna County Commission  
Current Districts

2020 Census  
Redistricting

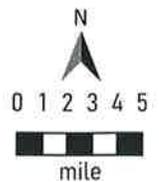
District	Pop	Deviation	Hispanic	Non-Hispanic									
				White		Native American		Black		Asian		Other Races	
1	8,692	217 2.6%	6,248 71.9%	2,073	23.8%	35	0.4%	94	1.1%	67	0.8%	175	2.0%
18+	6,385		4,359 68.3%	1,740	27.3%	26	0.4%	70	1.1%	54	0.8%	136	2.1%
2	8,900	425 5.0%	5,035 56.6%	3,478	39.1%	70	0.8%	65	0.7%	47	0.5%	205	2.3%
18+	6,932		3,492 50.4%	3,117	45.0%	55	0.8%	47	0.7%	43	0.6%	178	2.6%
3	7,835	-640 -7.6%	5,387 68.8%	2,120	27.1%	38	0.5%	69	0.9%	47	0.6%	174	2.2%
18+	5,801		3,699 63.8%	1,853	31.9%	28	0.5%	58	1.0%	35	0.6%	128	2.2%
Totals	25,427	Ideal: 8,475	16,670 65.6%	7,671	30.2%	143	0.6%	228	0.9%	161	0.6%	554	2.2%
18+	19,118		11,550 60.4%	6,710	35.1%	109	0.6%	175	0.9%	132	0.7%	442	2.3%



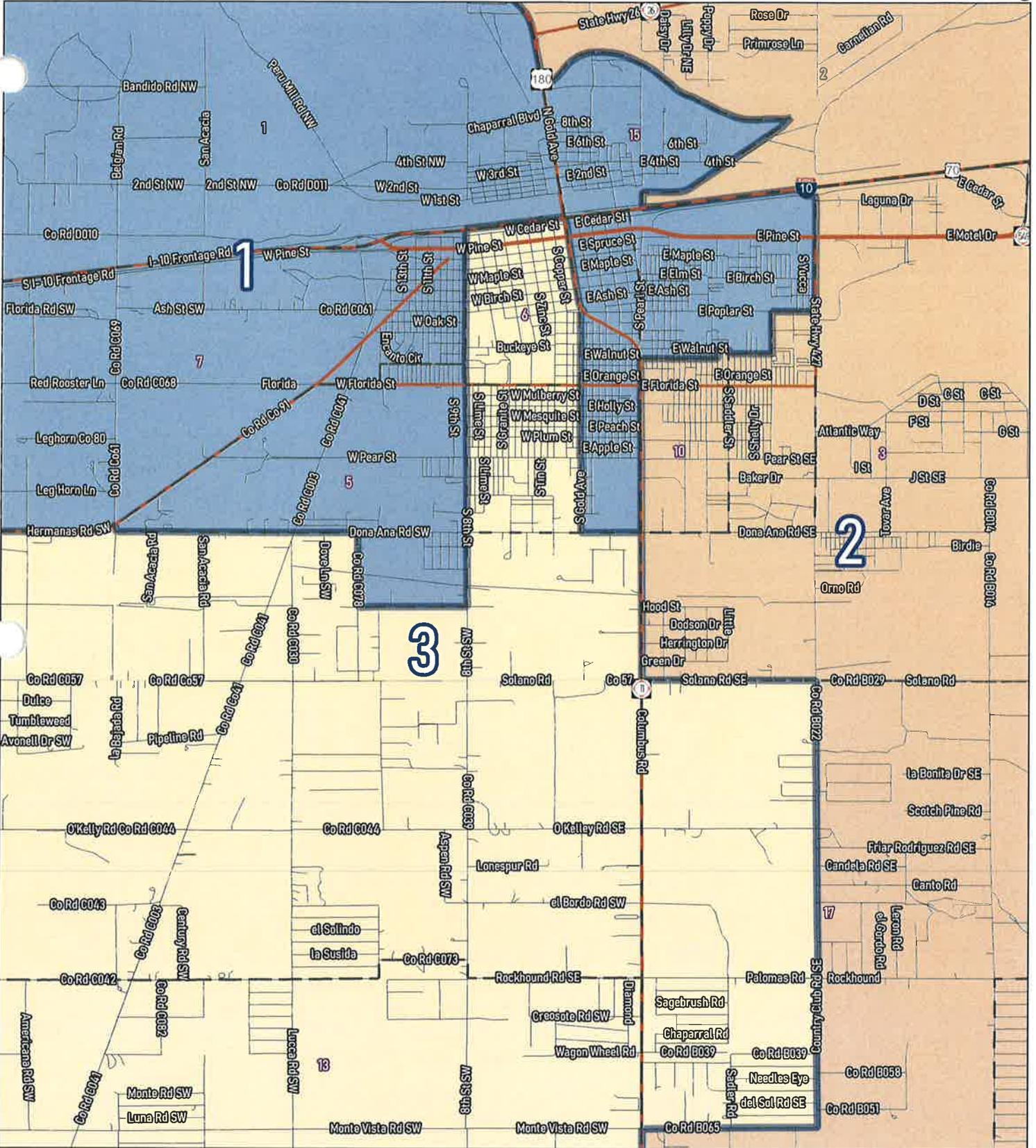
RESEARCH & POLLING INC.



Precincts



Research & Polling, Inc. distributes this map assuming no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause in reliance upon any maps.



▬ ▬ Precincts

# EXHIBIT B



0 0.5



mile

RESEARCH & POLLING INC.

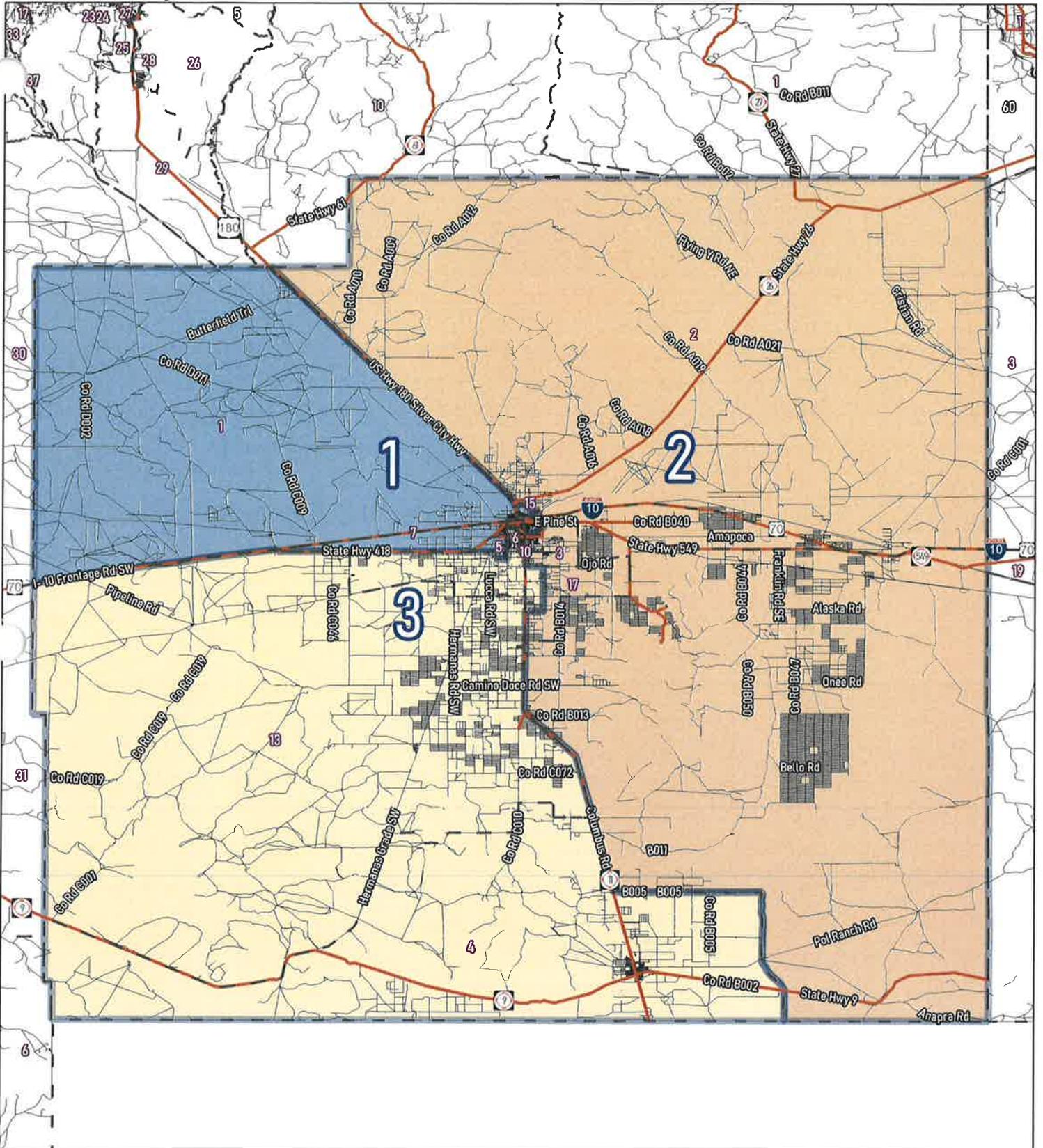


Research & Polling, Inc. distributes this map assuming no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause in reliance upon any maps.

Luna County Commission  
Plan A

2020 Census  
Redistricting

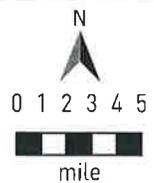
District	Pop	Deviation		Hispanic		Non-Hispanic									
						White		Native American		Black		Asian		Other Races	
1	8,692	217	2.6%	6,248	71.9%	2,073	23.8%	35	0.4%	94	1.1%	67	0.8%	175	2.0%
18+	6,385			4,359	68.3%	1,740	27.3%	26	0.4%	70	1.1%	54	0.8%	136	2.1%
2	8,531	56	0.7%	4,779	56.0%	3,373	39.5%	68	0.8%	64	0.8%	44	0.5%	203	2.4%
18+	6,667			3,318	49.8%	3,029	45.4%	55	0.8%	46	0.7%	43	0.6%	176	2.6%
3	8,204	-271	-3.2%	5,643	68.8%	2,225	27.1%	40	0.5%	70	0.9%	44	0.5%	182	2.2%
18+	6,066			3,873	63.8%	1,941	32.0%	28	0.5%	59	1.0%	35	0.6%	130	2.1%
Totals	25,427	Ideal: 8,475		16,670	65.6%	7,671	30.2%	143	0.6%	228	0.9%	155	0.6%	560	2.2%
18+	19,118			11,550	60.4%	6,710	35.1%	109	0.6%	175	0.9%	132	0.7%	442	2.3%



RESEARCH & POLLING INC



̄ ̄ Precincts



Research & Polling, Inc. distributes this map assuming no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause in reliance upon any maps.

11/04/2021

ECONOMIC DEVELOPMENT  
PLANNING  
CODE ENFORCEMENT



October 19, 2021

To: Surrounding Property Owners within 500ft of the property mentioned herein

RE: Public Hearing Notice

NOTICE IS HEREBY GIVEN that the Luna County Board of Commission will, at the regular meeting to be held November 10<sup>th</sup> 2021, 10:00 A.M. at the Luna County Courthouse located at 700 S. Silver Ave, will hold a public hearing to determine whether Luna County should grant a variance on utilities for Robbie Hervol, for the property located at 5495 Highway 549, SE within Luna County.

A map of the area is enclosed.

Should you have any comments or questions about the request, please contact the Luna County Offices in writing before November 10<sup>th</sup>, 2021 or attend the meeting on, November 10<sup>th</sup>, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Premal Patel".

Premal Patel  
Community Development Director

premal\_patel@lunacountynm.us

Enc (1)

ECONOMIC DEVELOPMENT

PLANNING

CODE ENFORCEMENT



MEMO

Date: 11/10/2021  
To: Board of County Commissioners, Luna County  
From: Premal Patel, Planning Director *P.P.*  
Subject: **Variance: Robbie Hervol Jr.**

Background

The subject property is 5495 Highway 549, SE, within Luna County jurisdiction. The applicant, Robbie Hervol, is seeking a variance for a shared well with address 5605 Highway 549, owned by Holy Family Parish; for residential purposes.

The State of New Mexico allows shared wells; however, Section 2.8.1 of Luna County Ordinance 75 states "There shall be no multiple users connected to a domestic water well." The applicant, Robbie Hervol, the agent for the owner of 5495 HWY 549, is seeking to place a secondary home on the property and wishes to share water with the owners of 5605 HWY 549.

Analysis

The applicant agrees to follow the Claim of Exemption to legally separate the secondary home from 5495 HWY 549 and create a new address. The property at 5605 HWY 549 was donated by the Hervol family (applicant) to the Holy Family Parish; who have agreed in writing to allow the sharing of the well. The applicant agrees to develop a shared well agreement to detail the terms and conditions for future owners of the property. The shared well is operated electrically and the Hervol family agrees to pay the electric bill for Holy Family Parish.

Board of Commission Alternatives

The options available to the Board of Commission are:

1. Approve the variance to allow a shared well for the property.
2. Deny the variance.
3. Table the motion.
4. Allow the applicant to withdraw the application.

Staff Recommendation

Staff has no technical objections to the variance.

Attachment

Map 1

029

Subject  
Property

23S 8W

5605

HIGHWAY 549 SE

5470

EL PORTAL RD SE

032



To whom it may concern,

Frank (Robbie) Heryol has permission to use the well and the electric meter on our property on 5508 Highway 540 NE. As soon as he is settled in the utilities will be taken over by Mr. Heryol.

Best regards,

*Guene Kichir*  
Holy Family Catholic Church

*Be it remembered that at the Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 10<sup>th</sup> day of November 2021, the following proceedings were had and entered of record.*

**RESOLUTION NO. 21-69**

**CALL TO AMEND ORDINANCE 86**

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

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners hereby give notice of its intent to consider the amendment of Ordinance 86; Adopting the Local Economic Development Plan to Implement the Authority Provided by the New Mexico Local Economic Development Act, at the Regular Meeting on November 10, 2021, at 10:00 a.m. or as soon thereafter as the matter may be heard in the Luna County Courthouse, 700 S. Silver Ave., Deming, New Mexico.

**BE IT FURTHER RESOLVED** that the Luna County Manager is authorized to take all necessary action necessary to properly place the issue of the amendment of Ordinance 86 before the Board of County Commissioners, including but not limited to, the publication of title and a general summary of the proposed amendments and making a copy of the proposed available to interested persons beginning with the date of publication, but no later than two weeks prior to the December 9<sup>th</sup>, 2021 meeting.

**DONE THIS 10<sup>th</sup> DAY OF NOVEMBER, 2021**

by the Board of County Commissioners of Luna County

**ATTEST:**

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

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

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

REVIEWED FOR LEGAL SUFFICIENCY:

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

\_\_\_\_\_  
Charles C. Kretek, County Attorney

LCBCC Meeting November 10, 2021

Accounts Payable

10/07/2021	\$403212.79
10/07/2021	\$1075.13
10/07/2021	\$4599.58
10/14/2021	\$295158.56
10/14/2021	\$12357.00
10/21/2021	\$97962.00
10/21/2021	\$438.53
10/28/2021	\$248966.15
10/28/2021	\$33.24

P-Cards

September 2021 \$135770.33

Total \$1,199,573.31

*Luna County*

*Board of County Commissioners*

**AGENDA 11/10/2021**

**PAYROLL**

10/08/2021	Register # 20210052	\$ 554,854.90
10/08/2021	*Register # 20210053	\$ 17,974.80
10/12/2021	*Register # 20210054	\$ 640.52
10/22/2021	Register # 20210055	\$ 555,502.77
10/22/2021	*Register # 20210056	\$ 23,442.66

**Total \$ 1,152,415.65**

\* Special Assignment Pay

**LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS**

**RESOLUTION NO. 21-70  
Proposed Inter/Intra Fund Budget Increases**

**WHEREAS**, the Board of County Commissioners of Luna County 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 Board of County Commissioners of Luna County hereby adopts the changes to the County's Fiscal Year 110, July 1, 2021 through June 30, 2022 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 NOVEMBER 2021.**

BOARD OF COUNTY  
COMMISSIONERS OF LUNA  
COUNTY

\_\_\_\_\_  
Barbara L. Reedy, Chairperson

\_\_\_\_\_  
Linda M. Smrkovsky, District Two

ATTEST:

\_\_\_\_\_  
John S. Sweetser, District Three

\_\_\_\_\_  
Berenda L. McWright, Luna County Clerk

Be it remembered that at a Regular meeting of the Board of County Commissioners of Luna County in Deming NM on the 10th day of Novembr, 2021, the following budget adjustments are proposed and entered of record.

## Budget Resolution Number 21-70

Proposed Inter/Intra FUND Budget Increase/Decrease

SCHEDULE OF BUDGET  
ADJUSTMENTS

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	408/22300	DWI - Grant	408/22300	\$ 2,937.77	408-00-2020 Supplies	\$ 347.78	To carryover balance from prior fiscal year.	\$ 2,967.02	\$ 3,314.80
						408-00-2101 Professional/Contract Services	\$ 2,589.99	To carryover balance from prior fiscal year.	\$ 14,500.00	\$ 17,089.99
Two	Increase	415/21800	Community Services - Luna County Health Council	415/21800	\$ (120,502.00)	415-77-1363 (Revenue) Grant - MCH	\$ (120,502.00)	To account for three additional grants for the LC Health Council program.	\$ (9,000.00)	\$ (129,502.00)
					\$ 120,502.00	415-17-2002 Salaries - Full - Time	\$ 45,300.00	To account for three additional grants for the LC Health Council program.	\$ 3,000.00	\$ 48,300.00
						415-17-2009 Office Supplies (NEW)	\$ 800.00	To account for three additional grants for the LC Health Council program.	\$ -	\$ 800.00
						415-17-2010 Mileage/Per Diem	\$ 1,500.00	To account for three additional grants for the LC Health Council program.	\$ -	\$ 1,500.00
						415-17-2020 Supplies (NEW)	\$ 36,402.67	To account for three additional grants for the LC Health Council program.	\$ -	\$ 36,402.67
						415-17-2060 Match - Medicare 1.45%	\$ 675.05	To account for three additional grants for the LC Health Council program.	\$ 52.20	\$ 727.25
						415-17-2063 Match - PERA 16.42%	\$ 3,033.94	To account for three additional grants for the LC Health Council program.	\$ -	\$ 3,033.94
						415-17-2064 Match - FICA 6.2%	\$ 2,886.86	To account for three additional grants for the LC Health Council program.	\$ 223.20	\$ 3,110.06
						415-17-2065 Match - Group Insurance	\$ 5,534.88	To account for three additional grants for the LC Health Council program.	\$ -	\$ 5,534.88
						415-17-2066 Workers' Compensation Assmnt Fee	\$ 4.60	To account for three additional grants for the LC Health Council program.	\$ -	\$ 4.60
						415-17-2070 Match - RHCA 2.0%	\$ 364.00	To account for three additional grants for the LC Health Council program.	\$ -	\$ 364.00
						415-17-2101 Professional/Contract Services	\$ 24,000.00	To account for three additional grants for the LC Health Council program.	\$ 3,000.00	\$ 27,000.00

ITEM NO	Adjustment Type	Fund/DFA Fund	Dept.	From	Amount	To	Amount	Purpose	Approved Budget Balance	Adjusted Budget Balance
Three	Increase	411/21800	Community Improvements	411/21800	\$ (4,873,065.85)	411-77-1502 (Revenue) (NEW) 2021 DOT-TPF Columbus	\$ (4,873,065.85)	New TPF Grant from NMDOT for Columbus International Gateway.	\$ -	\$ (4,873,065.85)
					\$ 4,873,065.85	411-00-2502 (NEW) 2021 DOT-TPF Columbus	\$ 4,873,065.85	New TPF Grant from NMDOT for Columbus International Gateway.	\$ -	\$ 4,873,065.85
					\$ 256,477.15	411-00-2499 Grant Matches	\$ 256,477.15	County Match for New TPF Grant from NMDOT for Columbus International Gateway.	\$ 25,000.00	\$ 281,477.15
Four	Increase	411/21800	Community Improvements	411/21800	\$ (500,000.00)	411-77-1503 (NEW) 2021 CAP-Road Equip	\$ (500,000.00)	New DFA Fund 82900 CAP grant to purchase and equip heavy equipment.	\$ -	\$ (500,000.00)
					\$ 500,000.00	411-00-2503 (NEW) 2021 CAP-Road Equip	\$ 500,000.00	New DFA Fund 82900 CAP grant to purchase and equip heavy equipment.	\$ -	\$ 500,000.00
Five	Increase	411/21800	Community Improvements	411/21800	\$ (495,000.00)	411-77-1504 (NEW) 2021 CAP-Youth Rec Complex	\$ (495,000.00)	New DFA Fund 82900 CAP grant to plan, design, construct, equip and furnish a youth and community development complex.	\$ -	\$ (495,000.00)
					\$ 495,000.00	411-00-2504 (NEW) 2021 CAP-Youth Rec Complex	\$ 495,000.00	New DFA Fund 82900 CAP grant to plan, design, construct, equip and furnish a youth and community development complex.	\$ -	\$ 495,000.00
Six	Increase	411/21800	Community Improvements	411/21800	\$ (990,000.00)	411-77-1505 (NEW) 2021 CAP-DV/Homeless Shelter	\$ (990,000.00)	New DFA Fund 82900 CAP grant to plan, design, construct, equip and furnish a domestic violence and homeless shelter.	\$ -	\$ (990,000.00)
					\$ 990,000.00	411-00-2505 (NEW) 2021 CAP-DV/Homeless Shelter	\$ 990,000.00	New DFA Fund 82900 CAP grant to plan, design, construct, equip and furnish a domestic violence and homeless shelter.	\$ -	\$ 990,000.00
Seven	Increase	411/21800	Community Improvements	411/21800	\$ (250,000.00)	450-77-1464 (NEW FUND) (Revenue) LEDA Projects	\$ (250,000.00)	Pass through from NM EDD LEDA for Green Stream Algae LLC for LEDA project.	\$ -	\$ (250,000.00)
					\$ 250,000.00	450-58-2478 (NEW FUND) Green Stream Algae LLC	\$ 250,000.00	Pass through from NM EDD LEDA for Green Stream Algae LLC for LEDA project.	\$ -	\$ 250,000.00
					\$ 125,000.00	450-58-2479 (NEW) Homegrown Market LLC	\$ 125,000.00	Local LEDA project with Homegrown Market LLC	\$ -	\$ 125,000.00

ITEM NO	Adjustment Type	Fund/DFA Fund	Dept.	From	Amount	To	Amount	Purpose	Approved Budget Balance	Adjusted Budget Balance
					\$ 384,414.92		\$ 384,414.92		\$ 39,742.42	\$ 424,157.34

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

Done at Deming New Mexico this Thursday the 10th day of November 2021.

BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY



Barbara L. Reedy, District 1

Linda M. Smrkovsky, District 2

John S. Sweetser, District 3

ATTEST:

\_\_\_\_\_  
Berenda L. McWright, Luna County Clerk

Entered By:

Date

Checked By:

Date

**LUNA COUNTY BOARD OF COUNTY  
COMMISSIONERS**

**RESOLUTION NO. 21-71  
Proposed Inter Department/Fund Transfers**

**WHEREAS**, the Board of County Commissioners of Luna County 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 Board of County Commissioners of Luna County hereby adopts the changes to the County's Fiscal Year 110, July 1, 2021 through June 30, 2022 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 NOVEMBER 2021.**

BOARD OF COUNTY  
COMMISSIONERS OF LUNA  
COUNTY

\_\_\_\_\_  
Barbara L. Reedy, Chairperson

\_\_\_\_\_  
Linda M. Smrkovsky, District Two

ATTEST:

\_\_\_\_\_  
Berenda L. McWright, Luna County Clerk

\_\_\_\_\_  
John S. Sweetser, District Three

Be it remembered that at a Regular meeting of the Board of County Commissioners of Luna County in Deming NM on the 10th day of November, 2021 the following budget adjustments are proposed and entered of record.

## Budget Resolution Number 21-71

### Proposed 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	401/11000	General Fund - Treasurer's	401-07-2006 Postage	\$21,446.17	\$11,000.00	401-07-2008 Printing and Publishing	\$11,000.00	To pay for postage for tax bills.
Two	Transfer	415/21800	Community Services Luna County Health Council	415-17-2101 Professional/Contract Services	\$1,000.00	\$1,000.00	415-17-2002 Salaries - Full-Time	\$1,000.00	To pay for contract services since contractor became a full-time employee.
				415-17-2363 Grant - MCH	\$54,883.38	\$522.40	415-17-2003 Salaries - Part-Time	\$400.00	To pay for part-time salaries to assist with the LC Health Council.
							415-17-2064 Match - Medicare 1.45%	\$23.20	To pay for part-time salaries to assist with the LC Health Council.
							415-17-2064 Match - FICA 6.2%	\$99.20	To pay for part-time salaries to assist with the LC Health Council.
Three	Transfer	609/22600	Adult Detention	609-21-2029 Capital Improvement	\$131,855.61	\$500.00	609-21-2006 Postage	\$500.00	To allow for spending through remainder of fiscal year.
Four	Transfer	609/22600	Adult Detention	609-21-2003 Salaries - Part-Time	\$27,000.00	\$10,000.00	609-21-2101 Professional/Contract Services	\$10,000.00	To allow for spending through remainder of fiscal year.
Five	Transfer	704/20900	Luna County VFD (fka Cooks Peak VFD)	704-00-2028 Capital Outlay	\$240,457.69	\$10,000.00	704-00-2011 Vehicle Expense	\$10,000.00	To allow for spending through remainder of fiscal year.
Six	Transfer	704/20900	Luna County VFD (fka Cooks Peak VFD)	704-00-2028 Capital Outlay	\$230,457.69	\$10,000.00	704-00-2012 Equip/Supplies/ Mtn/Repairs	\$10,000.00	To allow for spending through remainder of fiscal year.
Seven	Transfer	801/59900	Entertainment Complex	801-80-2108 Film Rental Payments	\$286,705.01	\$50,000.00	801-80-2012 Equip/Supplies/ Mtn/Repairs	\$50,000.00	To allow for spending through remainder of fiscal year for additional repairs/maintenance.
Eight	Fund to Fund Transfer	401/11000	General Fund	401		\$234,071.00	450	\$234,071.00	To transfer monies to fund new Fund 450 - LEDA Projects as approved by LCBC.

ITEM NO	Adjustment Type	Fund/ DFA Fund	Dept.	From	FROM Current Balance	Transfer amount	TO Line Number	Transfer Amount	Purpose
					\$993,805.55	\$327,093.40		\$327,093.40	

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

Done at Deming New Mexico this **Thursday the 10th day of November 2021.**

BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY

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

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

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



ATTEST:

\_\_\_\_\_  
Berenda L. McWright, Luna County Clerk

Entered By:

Date

Checked By:

Date



LUNA COUNTY, NEW MEXICO  
RESOLUTION NO. 21-72

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” OR THE “LENDER/GRANTOR”) AND LUNA COUNTY, NEW MEXICO (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF KEELER FARM, IN THE TOTAL AMOUNT OF \$88,000, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF A PRELIMINARY ENGINEERING REPORT FOR PEOPLE’S WATER COOP WATER SYSTEM TO INCLUDE RECOMMENDATIONS FOR REGIONALIZATION, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$8,800 SOLELY FROM FIFTY PERCENT (50%) OF A ONE-EIGHTH OF ONE PERCENT (0.125%) INCREMENT OF COUNTY LOCAL OPTION GROSS RECEIPTS TAX AND ACCEPTANCE OF A GRANT AMOUNT OF \$79,200; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT 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/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise.

WHEREAS, the CIB is a public body duly organized and created under and pursuant to the laws of the State of New Mexico (the “State”), particularly the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended, (the “Colonias Infrastructure Act” or the “Act”); and

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1, through 6-21-31, as amended (the “Finance Authority Act”); and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing county under the general laws of the State and more specifically, Section 4-16-1, NMSA 1978, as amended; and

WHEREAS, the Act creates the Colonias Infrastructure Project Fund (the "Fund") in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the CIB; and

WHEREAS, there exists within the boundaries of the Borrower/Grantee Keeler Farm, a community that has been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of Keeler Farm and the public they serve; and

WHEREAS, the Borrower/Grantee submitted an application dated February 11, 2021 for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on May 20, 2021 recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer the Loan/Grant Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on June 24, 2021; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and Keeler Farm that the Borrower/Grantee enter into an Agreement with the Lender/Grantor to borrow \$8,800 from the Lender/Grantor and to accept a grant in the amount of \$79,200 from the Lender/Grantor to finance the costs of a preliminary engineering report for the People's Water Coop water system including recommendations for reorganization, this project being more particularly described in the Term Sheet; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with the Local Match and other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee, Keeler Farm, and the constituent public they serve that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the CIB or the Finance Authority or a debt or pledge of the full faith and credit of the Borrower/Grantee, the CIB, the Finance Authority or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the County Clerk this Resolution and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Local Match is now available to the Borrower/Grantee to complete the Project; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant 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. Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Resolution 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 Resolution including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms not defined herein shall have the meaning given them by the Loan/Grant Agreement.

“Agreement” or “Loan/Grant Agreement” means the Loan/Grant Agreement and any amendments or supplements thereto, including the Exhibits attached thereto.

“Authorized Officers” means, any one or more of the Chair, County Manager, Budget and Procurement Director, and County Clerk thereof.

“Borrower/Grantee” means Luna County, New Mexico.

“CIB” means the Colonias Infrastructure Board created by the Act.

“Closing Date” means the date of execution of the Loan/Grant Agreement by the Borrower/Grantee and the Finance Authority.

“Colonia” or “Colonias” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly Keeler Farm.

“Colonias Infrastructure Project Fund” or “Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Conditions” has the meaning given to that term in the Loan/Grant Agreement.

“Completion Date” means the date of final payment of the cost of the Project.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by the Loan/Grant Agreement, in an amount not exceeding five percent (5%) of the Loan/Grant Amount.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the qualified project, in an amount not exceeding ten percent (10%) of the Loan/Grant Amount, but does not include adjudication services.

“Finance Authority” means the New Mexico Finance Authority.

“Fiscal Year” means the period commencing on July 1 of 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 Borrower/Grantee as its fiscal year.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the Board of County Commissioners of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall equal 90% of the Amount disbursed not to exceed \$79,200.

“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.

“Lender/Grantor” means the Finance Authority.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than \$8,800.

“Loan/Grant” or “Loan/Grant Amount” means the amount provided to the Borrower/Grantee as the Grant Amount and borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project. The value of the Loan/Grant shall not equal more than \$88,000.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$8,800.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Pledged Revenues” means fifty percent (50%) of the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax enacted pursuant to Section 7-20E-9, NMSA 1978, as amended, and the Tax Ordinance, distributed to the Borrower/Grantee and pledged to the payment of the Loan Payments pursuant to this Resolution and the Loan/Grant Agreement and described in the Term Sheet.

“Policies” means the Colonias Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

“Project” means the project described in the Term Sheet.

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonias infrastructure. A Qualified Project may include a water system, a wastewater system, solid

waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means this Resolution as it may be supplemented or amended from time to time.

“Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, Sections 2.91.2.1 through 2.91.2.18 NMAC.

“State” means the State of New Mexico.

“Tax Ordinance” means Ordinance No. 21, as amended, passed and approved by the Borrower/Grantee pursuant to Section 7-20E-9, NMSA 1978, as amended, which imposes a one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax on the gross receipts of persons engaging in business within the Borrower/Grantee, effective January 1, 1993, originally imposed what was known as the third increment of County Local Option Gross Receipts Tax. Pursuant to Laws 2019, Chapter 274, § 16, the County Local Option Gross Receipt Tax imposed by Ordinance No. 21 is no longer identifiable as the third increment, and instead comprises one-eighth of one percent (.125%) of the maximum rate of county gross receipts tax that may be imposed under Section 7-20E-9, NMSA 1978, as amended, of one and three-quarters percent (1.75%), fifty percent (50%) of which is pledged to the Loan.

“Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was planned, which is thirty (30) years.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition and completion of the Project, the pledge of the Pledged Revenues to payment of amounts due under the Loan/Grant Agreement, and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition and completion of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement and the other documents related to the transaction are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee, Keeler Farm and the public they serve.

Section 4. Findings. The Governing Body 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 Borrower/Grantee, Keeler Farm and the public they serve.

B. Moneys available and on hand for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring and completing the Project but, together with the Loan/Grant Amount, are sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary, convenient and in furtherance of the governmental purposes of the Borrower/Grantee, and in the interest of the public health, safety, and welfare of the constituent public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, the Local Match and other amounts available to the Borrower/Grantee, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life.

E. Together with the Loan/Grant Amount, and other amounts available to the Borrower/Grantee, the Local Match is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project.

F. The Lender/Grantor shall maintain on behalf of the Borrower/Grantee a separate Project Account as a book account only on behalf of the Borrower/Grantee and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee and other qualifying entities that are participants in the Project has title to or easements or rights of way on the real property upon which the Project is being constructed or located.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Borrower/Grantee and by the other qualifying entities involved in the Project and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of \$79,200 and borrowing the Loan Amount of \$8,800 to be utilized solely for Eligible Items necessary to complete the Project, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of \$79,200 and the Loan shall be in

the amount of \$8,800. Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body, at which this Resolution was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the County Clerk is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account. The Borrower/Grantee hereby consents to creation of the Project Account by the Finance Authority and further approves of the deposit or crediting of a portion of the Loan/Grant Amount to pay expenses. Until the Completion Date, the amount of the Loan/Grant credited to the Project Account shall be used and paid out solely for Eligible Items necessary to acquire and complete the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement.

B. Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. Following the Completion Date or the earlier expiration of the time allowed for disbursement of Loan/Grant funds as provided in the Loan/Grant Agreement, any balance remaining in the Project Account shall be transferred and deposited into the Colonias Infrastructure Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

C. CIB and Finance Authority Not Responsible. Borrower/Grantee shall apply the funds derived from the Loan/Grant Agreement as provided therein, and in particular Article V of the Loan/Grant Agreement. Neither the CIB nor the Finance Authority shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project. Lender/Grantor shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount directly from the Pledged Revenues to the Finance Authority as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and

other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount or other amounts due under the Loan/Grant Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, the priority of which is consistent with that shown on the Term Sheet.

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/Grant 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 and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Resolution. This Resolution after its adoption may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the CIB and the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully 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, ordinances, resolutions, 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 Borrower/Grantee kept for that purpose, authenticated by the signatures of the Chair and County Clerk of the Borrower/Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

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:

*[Remainder of page intentionally left blank.]*

*[Form of Notice of Adoption 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. 21-72, duly adopted and approved by the Board of County Commissioners of Luna County on November 10, 2021. A complete copy of the Resolution is available for public inspection during normal and regular business hours in the office of the County Clerk, at 700 South Silver Avenue, Deming, New Mexico.

The title of the Resolution is:

LUNA COUNTY, NEW MEXICO  
RESOLUTION NO. 21-72

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” OR THE “LENDER/GRANTOR”) AND LUNA COUNTY, NEW MEXICO (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF KEELER FARM, IN THE TOTAL AMOUNT OF \$88,000, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF A PRELIMINARY ENGINEERING REPORT FOR PEOPLE’S WATER COOP WATER SYSTEM TO INCLUDE RECOMMENDATIONS FOR REGIONALIZATION, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$8,800 SOLELY FROM FIFTY PERCENT (50%) OF A ONE-EIGHTH OF ONE PERCENT (0.125%) INCREMENT OF COUNTY LOCAL OPTION GROSS RECEIPTS TAX AND ACCEPTANCE OF A GRANT AMOUNT OF \$79,200; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT 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/GRANT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

*[End of Form of Notice of Adoption for Publication]*

PASSED, APPROVED AND ADOPTED THIS 10<sup>th</sup> DAY OF NOVEMBER, 2021.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

ATTEST:

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

*[Remainder of page intentionally left blank.]*

Governing Body Member \_\_\_\_\_ then moved adoption of the foregoing Resolution, duly seconded by Governing Body Member \_\_\_\_\_.

The motion to adopt the 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 the motion, the Chair declared the motion carried and the 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 upon motion duly made, seconded and carried, was adjourned.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

ATTEST:

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

*[Remainder of page intentionally left blank.]*

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF LUNA )

I, Berenda McWright, the duly qualified and acting County Clerk of Luna County, New Mexico (the "Borrower/Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of County Commissioners of the Borrower/Grantee (the "Governing Body"), had and taken at a duly called regular meeting held over Zoom, on November 10, 2021 at the hour of 10:00 a.m., insofar as the same relate to the adoption of Resolution No. 21-72 and the execution and delivery of the proposed Loan/Grant Agreement, a copy 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. The 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 the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including the Borrower/Grantee's open meetings Resolution No. 21-01, adopted and approved on January 14, 2021 in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 2021.

LUNA COUNTY, NEW MEXICO

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

6082693

EXHIBIT "A"

Notice of Meeting, Meeting Agenda and Minutes, if available.

\$88,000

COLONIAS INFRASTRUCTURE PROJECT FUND  
LOAN/GRANT AGREEMENT

Dated

December 17, 2021

By and Between the

NEW MEXICO FINANCE AUTHORITY,

and

LUNA COUNTY, NEW MEXICO,  
as Borrower/Grantee.

COLONIAS INFRASTRUCTURE PROJECT FUND  
LOAN/GRANT AGREEMENT

THIS LOAN/GRANT AGREEMENT (the "Agreement") dated December 17, 2021, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and LUNA COUNTY, NEW MEXICO (the "Borrower/Grantee") for the benefit of the Colonia of Keeler Farm (the "Colonia").

WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State of New Mexico (the "State"), constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended, (the "Finance Authority Act"); and

WHEREAS, the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended (the "Colonias Infrastructure Act" or the "Act") creates the Colonias Infrastructure Project Fund (the "Fund") in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the Colonias Infrastructure Board (the "CIB"); and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing county under the general laws of the State and more specifically, Section 4-16-1, NMSA 1978, as amended; and

WHEREAS, there exists within the boundaries of the Borrower/Grantee, the Colonia, a community that has been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of the Colonia and the constituent public the Borrower/Grantee serves; and

WHEREAS, the Borrower/Grantee is authorized to impose by ordinance a County Gross Receipts Tax pursuant to Section 7-20E-9, NMSA 1978; and

WHEREAS, the Borrower/Grantee has by the Tax Ordinance imposed the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax on the gross receipts of all persons engaging in business within the Borrower/Grantee which provides for the Pledged Revenues; and

WHEREAS, the County Local Option Gross Receipt Tax imposed by Tax Ordinance is no longer identifiable as the third increment, and instead comprises one-eighth of one percent (0.125%) of the maximum rate of county gross receipts tax that may be imposed under Section 7-20E-9, NMSA 1978, as amended, of one and three-quarters percent (1.75%), fifty percent (50%) of which is pledged to the Loan;

WHEREAS, pursuant to the Act, Board Rules and the Policies, the CIB authorizes the Finance Authority to make loans/grants to Qualified Entities from the Fund for recommended Qualified Projects; and

WHEREAS, the Borrower/Grantee submitted an application dated February 11, 2021 for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on May 20, 2021 recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer this Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on June 24, 2021; and

WHEREAS, pursuant to the Board Rules and the Policies, the Borrower/Grantee will receive ten percent (10%) of its funding as a loan, in order to ensure the long-term solvency of the Fund by providing annual streams of revenue available to fund additional Qualified Projects; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan and grant a lien to the Finance Authority on the Pledged Revenues subordinate to all other liens thereon present and future, except that any present and future loans from the Finance Authority to the Borrower/Grantee pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 724A1 through 724A-11, as amended, shall be on a parity with this Loan/Grant; and

WHEREAS, the obligation of the Borrower/Grantee under this Agreement shall constitute a special, limited obligation of the Borrower/Grantee, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Borrower/Grantee or a charge upon the general credit or ad valorem taxing power of the Borrower/Grantee, or the State; and

WHEREAS, the execution, performance, and delivery of this Agreement have been authorized, approved, and directed by the Governing Body pursuant to the Resolution; and

WHEREAS, the execution and performance of this Agreement have been authorized, approved, and directed by all necessary and appropriate action of the CIB and the Finance Authority and their respective officers.

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 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 Agreement including the foregoing recitals, unless the context clearly requires otherwise.

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

“Application” means the Colonias Infrastructure Project Fund Application for Funding dated February 11, 2021 of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the Chair, County Manager, Budget and Procurement Director and County Clerk thereof; with respect to the Finance Authority, the Chair, Vice-Chair 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.

“Board Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, Sections 2.91.2.1 through 2.91.2.18 NMAC.

“Closing Date” means the date of execution of this Agreement by the Borrower/Grantee and the Finance Authority.

“Colonia” or “Colonias” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly the Colonia of Keeler Farm.

“Conditions” means (1) all readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the CIB; (2) all requirements set forth in the Term Sheet; (3) all requirements outlined in Section 2.1(p) and Section 5.1; (4) a determination that the disbursement applied for does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies.

“Department of Finance and Administration” or “DFA” means the department of finance and administration of the State.

“Eligible Architectural, Engineering and Construction Management Fees” means the fees and costs associated with the architectural, engineering and construction project management costs for services rendered to the Borrower/Grantee for the transaction of the Project and those directly associated with the Project.

“Eligible Fees for Other Professional Services” means the fees and costs incurred for other professional services necessary to the completion of the Project including, but not limited to, services provided by accounting and auditing firms, hydrologists and surveyors.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by this Agreement in an amount not exceeding five percent (5%) of the Loan/Grant Amount.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs, Eligible Fiscal Agent Fees, Eligible Architectural, Engineering and Construction Management Fees, and Eligible Fees for Other Professional Services.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the Qualified Project in an amount not exceeding ten percent (10%) of the Loan/Grant Amount, but does not include adjudication services.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Agreement.

“Final Debt Service Schedule” means the schedule of Loan Payments due on this Agreement following the Final Requisition, as determined on the basis of the Loan Amount.

“Final Requisition” means the final requisition of moneys to be submitted by the Borrower/Grantee, which shall be submitted by the Borrower/Grantee on or before the expiration of the Interim Period as provided in Section 4.4 of this Agreement.

“Fiscal Year” means the period commencing on July 1 of 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 Borrower/Grantee as its fiscal year.

“Force Majeure” means acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; an order of any kind of the Government of the United States or of the State or civil or military authority or any court of competent jurisdiction; or any other act or condition that was beyond the reasonable control of, without fault or negligence of, or not reasonably foreseeable by the party claiming the Force Majeure event; except for (i) general economic conditions; or (ii) an inability of a party claiming the Force Majeure event to pay any debts when due.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial

Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the means the Board of County Commissioners of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and shall equal 90% of the amount disbursed during the Interim Period not to exceed \$79,200.

“Hardship Waiver” means a determination by the Finance Authority pursuant to Section 4.1(a)(ii) herein that the annual principal payment by the Borrower/Grantee should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Agreement and not solely to the particular section or paragraph of this Agreement in which such word is used.

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

“Interim Debt Service Schedule” means the anticipated schedule of Loan Payments due on this Agreement following the Final Requisition, assuming disbursement of the entire Loan Amount within twenty-four (24) months of the Closing Date. The Interim Debt Service Schedule is attached hereto as Exhibit “C”.

“Interim Period” means the period no greater than twenty-four (24) months, unless a longer period is approved by the Finance Authority as provided in Section 4.4 of this Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Borrower/Grantee to pay costs of the Project.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as during the Interim Period for the purpose of funding the Project and shall not equal more than \$8,800.

“Loan/Grant” or “Loan/Grant Amount” means the combined amount distributed to the Borrower/Grantee during the Interim Period partially as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and shall not equal more than \$88,000.

“Loan Payments” means, collectively, the Principal Component and interest, if any, to be paid by the Borrower/Grantee as payment of this Agreement as shown on Exhibit “C” hereto.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in

the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$8,800.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Parity Obligations” means this 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 parity with this Agreement, as shown on the Term Sheet.

“Pledged Revenues” means fifty percent (50%) of the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax enacted pursuant to Section 7-20E-9, NMSA 1978, as amended, and the Tax Ordinance, distributed to the Borrower/Grantee and pledged to the payment of the Loan Payments pursuant to the Resolution and this Agreement and described in the Term Sheet.

“Policies” means the Colonias Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

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

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

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, which shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonias infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means the Borrower/Grantee Resolution No. 21-72 adopted by the Governing Body on November 10, 2021 authorizing the acceptance of the Loan/Grant, approving this Agreement and pledging the Pledged Revenues to the payment of the Loan Payments as shown on the Term Sheet.

“State” means the State of New Mexico.

“Tax Ordinance” means Ordinance No. 21, as amended, passed and approved by the Borrower/Grantee pursuant to Section 7-20E-9, NMSA 1978, as amended, which imposes a one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax on the gross receipts of persons engaging in business within the Borrower/Grantee, effective January 1, 1993, originally imposed what was known as the third increment of County Local Option Gross Receipts Tax. Pursuant to Laws 2019, Chapter 274, § 16, the County Local Option Gross Receipt Tax imposed by Ordinance No. 21 is no longer identifiable as the third increment, and instead comprises one-eighth of one percent (.125%) of the maximum rate of county gross receipts tax that may be imposed under Section 7-20E-9, NMSA 1978, as amended, of one and three-quarters percent (1.75%), fifty percent (50%) of which is pledged to the Loan.

“Term Sheet” means Exhibit “A” attached to this Agreement.

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was planned, which is thirty (30) years.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE BORROWER/GRANTEE

Section 2.1 Representations, Covenants and Warranties of the Borrower/Grantee: The Borrower/Grantee represents, covenants and warrants for the benefit of the Finance Authority as follows:

(a) Binding Nature of Covenants; Enforceability. All representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee contained in this Agreement shall be deemed to be the representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee to the full extent authorized or permitted by law, and such representations, covenants, stipulations, obligations and agreements shall be binding upon the Borrower/Grantee and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such representations, covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

(b) Authorization of Agreement. The Borrower/Grantee is a Qualified Entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved its acceptance of the Loan/Grant and the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement, and this Agreement

and the other documents related to the transaction to which the Borrower/Grantee is a party constitute legal, valid and binding special obligations of the Borrower/Grantee enforceable against the Borrower/Grantee in accordance with their respective terms.

(c) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the Colonia and the constituent public they serve.

(d) Useful Life. The Agreement Term is not greater than the Useful Life of the Project, and in any event shall not exceed thirty (30) years.

(e) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the proceeds of the Loan/Grant Amount shall be distributed pro rata as the Loan Amount and Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Local Match and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety.

(f) Lien. The Loan Payments constitute an irrevocable lien on the distribution on the Pledged Revenues, the priority of which is consistent with that shown on the Term Sheet.

(g) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Payments as provided in this Agreement, except when a Hardship Waiver is obtained pursuant to Section 4.1(a)(ii) of this Agreement. The Loan Payments shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to make the Loan Payments from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee 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.

(h) No Breach or Default Caused by Agreement. Neither the execution and delivery of this Agreement and the other documents related to the transaction, nor the fulfillment of or compliance with the terms and Conditions in this Agreement and the other documents related to the transaction, 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 Borrower/Grantee is a party or by which the Borrower/Grantee is bound, or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower/Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(i) Irrevocable Enactments. While this Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for payment of this Agreement, including the Resolution, shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all

principal and interest that has been repaid, or provision made for payment thereof, shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof. The Borrower/Grantee shall not impair the rights of the Finance Authority or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(j) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute or deliver this Agreement and the other documents related to the transaction or to comply with its obligations under this Agreement and the other documents related to the transaction.

(k) Agency Approval. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations under this Agreement and the other documents related to the transaction, 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.

(l) No Event of Default. No event has occurred and no condition exists which, with the giving of notice or the passage of time or upon the execution and delivery of this Agreement or the other documents related to the transaction, would constitute an Event of Default on the part of the Borrower/Grantee under this Agreement and the other documents related to the transaction.

(m) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or future Project-related expenses of the Borrower/Grantee.

(n) Borrower/Grantee's Existence. The Borrower/Grantee will maintain its legal identity and existence so long as this Agreement remains outstanding unless another Political Subdivision of the State, State agency, or other entity by operation of law succeeds to the liabilities, rights and duties of the Borrower/Grantee under this Agreement without adversely affecting to any substantial degree the privileges and rights of the CIB and Finance Authority.

(o) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The engineering design or engineering feasibility reports shall not involve or anticipate a sale, lease, mortgage, pledge, or the relocation or disposal of any part of the product or system designed during its Useful Life; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee and the other qualifying entities may, with the express written approval of the Finance Authority and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the term of the Agreement. Any such agreement shall provide that the CIB and Finance Authority, or either of them, shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity (as defined by the Act) other than the Borrower/Grantee, owning or

operating any portion of the Project during the term of the Agreement. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life.

(p) Expected Coverage Ratio. The Pledged Revenues are reasonably expected to equal or exceed—from the Fiscal Year in which the Closing Date occurs and, on an ongoing basis during each Fiscal Year of the Agreement Term—one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(q) Right to Inspect. The Finance Authority shall have the right to inspect at all reasonable times all records, accounts and data relating to the Project and to inspect the Project and all properties comprising the Project, and the Borrower/Grantee shall supply such records, accounts, and data as are requested by the Finance Authority, within thirty (30) days of receipt of such request, written or oral.

(r) Pledged Tax Revenues Covenants. The Governing Body has duly adopted the Tax Ordinance imposing the County Share Gross Receipts Tax, which constitutes the Pledged Revenues. The Tax Ordinance has not been repealed or superseded and is in full force and effect.

(s) Records and Reporting. The Borrower/Grantee shall maintain financial records in accordance with Generally Accepted Accounting Principles throughout the Agreement Term, and in the event that the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14 does not apply, conduct an audit of the Project's financial records if requested by the CIB or the Finance Authority and provide any and all other information and access to the Project as requested by the CIB or the Finance Authority.

(t) Acquisition and Completion. The Borrower/Grantee shall proceed expeditiously to complete the Project and shall commence the Project in a commercially reasonable timeframe following the Closing Date. Further, the Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire and complete the Project lawfully and efficiently in accord with all applicable laws, ordinances, resolutions and regulations relating to the planning and completion of the Project and use of the Loan/Grant proceeds. The Project complies with Section 7-20E-9, NMSA 1978. The plans and specifications for the Project shall fully incorporate the available technologies and operational design for water use efficiency described in the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(u) Use of Grant Proceeds for Construction; Other Qualified Entities. If any of the proceeds of the Loan/Grant are used for construction, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, installed, located, completed or extended on real property owned by a Qualified Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the

Project on such real property, obtain the written agreement of such other Qualified Entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, installed, located, completed or extended on such real property), which written agreement shall be subject to approval by the Finance Authority and shall include an express statement by such other Qualified Entity that the Finance Authority is a third party beneficiary of such written agreement.

(v) Local Match. The Local Match is legally available for the Project, has been applied or set aside by the Borrower/Grantee solely for the purposes of the Project and sufficient evidence of the Local Match has been provided and will be continued to be provided as part of the Borrower/Grantee's quarterly reporting as outlined in Section 7.1 and as otherwise requested by the Finance Authority.

(w) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended, and upon request, provide the Finance Authority with a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(x) Executive Order 2013-006 Requirements. The Borrower/Grantee has and will meet the requirements of Executive Order 2013-006 prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the CIB.

(y) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

(z) Additional Debt. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenues that is senior to or on parity with this Agreement, the Borrower/Grantee will seek the written consent of the Finance Authority, which consent will not be unreasonably withheld. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenue subordinate to this Agreement or a lien on any revenues of the Borrower/Grantee other than the Pledged Revenues, the Borrower/Grantee will notify the Finance Authority in writing of such indebtedness.

### ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate upon the earliest of the following events: (a) submission and acceptance of a completed Form of Certificate of Completion, Exhibit "D", and repayment of the Loan Amount and Interest or (b) the exercise by the Finance Authority to terminate the Agreement pursuant to an Event of Default as outlined in Section IX of this Agreement.

### ARTICLE IV LOAN/GRANT TO THE BORROWER/GRANTEE; INVESTMENT OF MONEYS

Section 4.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The Finance Authority hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Finance Authority, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit "C" of this Agreement. The Loan Amount shall be pre-payable by the Borrower/Grantee at the conclusion of the Interim Period without penalty.

(i) Subordinate Nature of Loan Amount Obligation. The obligation of the Borrower/Grantee to make the Loan Payments shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Borrower/Grantee to make the Loan Payments shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Finance Authority pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended.

(ii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, if a Borrower/Grantee has encountered an unforeseeable hardship, the Borrower/Grantee may apply in writing on or before April 1<sup>st</sup> to the Finance Authority for forgiveness of the annual Loan Payment coming due on June 1 of the same year. The Borrower/Grantee shall submit its application to the Finance Authority for a determination by the Finance Authority, in cooperation with DFA, and shall submit sufficient documentation of the existence of the unforeseeable hardship as is reasonably required by the Finance Authority, in cooperation with DFA, to make a determination. The Borrower/Grantee shall promptly respond to additional requests for information from the Finance Authority or DFA. Such application for a Hardship Waiver shall be executed by the Authorized Officers of the Borrower/Grantee. The Finance Authority shall communicate the decision to the Borrower/Grantee in writing. In the event of a determination of unforeseeable hardship, the Loan Payment otherwise due on June 1 of that year shall be forgiven. If no unforeseeable hardship is found to exist, the Loan Payment shall remain outstanding and due and payable in accordance with the terms of this Agreement.

(iii) Constitutional and Statutory Debt Limitations. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the CIB, the Finance Authority, the State or the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation.

(b) Grant to the Borrower/Grantee. The CIB has granted to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the Finance Authority and the CIB an amount equal to the Grant Amount subject to the terms of this Agreement.

(c) Project Account. The Finance Authority may establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the Finance Authority.

Section 4.2 Investment of Borrower/Grantee's Accounts. Money on deposit in the Borrower/Grantee's accounts created hereunder and held by the Finance Authority may be invested by the Finance Authority for the credit of the Fund.

Section 4.3 Loan/Grant Amount Does Not Exceed Total Cost. The sum of the Grant Amount, the Loan Amount, and the Local Match (and as set forth on the Term Sheet) does not exceed the cost of the Project, which, along with other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project.

Section 4.4 Final Requisition. The Final Requisition shall be submitted by the Borrower/Grantee within the Interim Period. The Interim Period may be extended only as approved in writing by an Authorized Officer of the Finance Authority, based on the Borrower/Grantee's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority, that unanticipated circumstances resulted in delaying the acquisition and completion of the Project, and submission of the Borrower/Grantee's Final Requisition.

#### ARTICLE V LOAN/GRANT AMOUNT DISBURSEMENT CONDITIONS

Section 5.1 Conditions Precedent to Disbursement of Loan/Grant Amount. Prior to the payment of any requisition of the Loan/Grant Amount or any portion thereof by the Finance Authority from the Fund, the following conditions shall be satisfied:

(a) The Finance Authority shall have determined that the Borrower/Grantee has met the Conditions established for the Loan/Grant; and

(b) Prior to disbursement of any portion of the Loan/Grant Amount for planning and design, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to or easements, rights of way, or permits on the real property upon or through which the planning and design phase is to be conducted, or if acquisition and completion of the Project does not require physical or visual access to existing lands or facilities, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney certifying that no title to, easements, rights of way, or permits are necessary to acquire and complete the Project; and

(c) The Borrower/Grantee shall be in compliance with the provisions of this Agreement; and

(d) No Event of Default has occurred; and

(e) The Borrower/Grantee shall have provided any other information requested by the Finance Authority in its absolute discretion including documentation sufficient to make a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

Section 5.2 Accounting for Amounts Credited to the Project Account. So long as Section 5.1 has been complied with and all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of all plans and specifications), upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Borrower/Grantee, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the Borrower/Grantee that the amount of the disbursement request represents the progress of design, construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the Finance Authority shall seek funds sufficient to satisfy the request and, upon receipt of those funds disburse from the Fund, amounts which together are sufficient to pay the requisition in full or that portion approved by the Finance Authority in its sole discretion. The certification provided pursuant to this Section 5.2 in support of the requisition must be acceptable in form and substance to the Finance Authority. The Borrower/Grantee shall provide such records or access to the Project as the Finance Authority, and, at its request, the CIB, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's requisition requests made hereunder.

Section 5.3 Acknowledgment and Non-liability for Funding Interruption. The Borrower/Grantee hereby acknowledges that the Finance Authority and the CIB may be required to seek or request funds to satisfy the request outlined in Section 5.2 from an agency, instrumentality or other Political Subdivision of the State and that the Finance Authority and the CIB may have no control or authority over those entities. The Borrower/Grantee hereby agrees to waive on behalf of itself and indemnify and hold the Finance Authority and the CIB harmless from any and all third party claims, liability or damage that may or could be caused as a result of a delay or denial of funds related to or arising from the procedure described above or any other mechanism necessary or required to request, secure or process funds.

Section 5.4 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Fund, of the Loan/Grant Amount, or any portion thereof, without the approval of the Finance Authority to reimburse any expenditure made prior to the approval date of the award by the Finance Authority Board.

Section 5.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of the Project an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the Finance Authority, substantially in the form of Exhibit "E" attached hereto, stating that, to his or her knowledge, that the Project has been completed. No portion of the Loan/Grant Amount shall be disbursed after the expiration of the Interim Period.

Section 5.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Amount; Termination of Pledge. Upon the first to occur of either (a) completion of the disbursement of the Loan/Grant Amount as signified by delivery of the completion certificate contemplated in Section 5.5 hereof; or (b) the earlier expiration of the time allowed for disbursements of Loan/Grant funds as provided in Section 5.5 hereof, the Finance Authority shall transfer the amounts remaining on deposit in the Project Account, if any, to such other fund

permitted by law. Upon such entry, the pledge of the Project Account, if any, established in this Agreement shall terminate.

## ARTICLE VI LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Loan to the Borrower/Grantee; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from the Finance Authority an amount not to exceed the Loan Amount. The Borrower/Grantee promises to pay, but solely from the sources pledged herein, the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Borrower/Grantee does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to pay the Loan Payments, and other amounts owed by the Borrower/Grantee as herein provided, subject to and subordinate to all other pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (except only that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the Finance Authority pursuant to the Act or the Water Project Finance Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) all other rights hereinafter granted, for the securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided, however, that if the Borrower/Grantee, its successors or assigns, shall pay, or cause to be paid, all Loan Payments at the time and in the manner contemplated by this Agreement, and shall pay all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment, this Agreement and the rights created thereby shall terminate; otherwise, this Agreement shall remain in full force and effect.

The schedule of Loan Payments, assuming the disbursement of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Agreement as Exhibit "C". Within thirty (30) days after the Final Requisition is made, the Finance Authority shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Borrower/Grantee pursuant to this Agreement. Such Final Debt Service Schedule shall supersede the schedule attached hereto as Exhibit "C".

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Borrower/Grantee and the Finance Authority acknowledge and agree that the obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided, and that the Agreement shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee or the State within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall

be construed to pledge or to create a lien on any class or source of Borrower/Grantee moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Borrower/Grantee hereunder, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Colonias Infrastructure Project Fund. All Loan Payments made by the Borrower/Grantee to the Finance Authority to repay the Loan Amount and interest thereon, if any, shall be deposited into the Colonias Infrastructure Project Fund.

Section 6.3 Manner of Payment. The Loan Amount shall be payable by the Borrower/Grantee to the Finance Authority in annual installments of principal payable on June 1 after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 10.1 of this Agreement. The obligation of the Borrower/Grantee 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. Notwithstanding any dispute between the Borrower/Grantee and the Finance Authority, any vendor or any other person, the Borrower/Grantee 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 Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee 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 make the Loan Payments and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

Section 6.5 Finance Authority's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided in this Agreement and upon written request from the Borrower/Grantee, the Finance Authority agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Finance Authority no longer holds or maintains any lien or claim against the Pledged Revenues.

## ARTICLE VII ADMINISTRATION

Section 7.1 Borrower/Grantee Reporting to the Finance Authority. The Borrower/Grantee shall provide the Finance Authority with a quarterly written report substantially in the form of Exhibit "D" attached hereto, or other report format as designated by

the Finance Authority, and signed by an Authorized Officer of the Borrower/Grantee. The first quarterly report shall be due on March 31, 2022, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, and (c) a description of the percentage of completion of the Project.

Section 7.2 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Upon the completion of the Project as signified by delivery of the completion certificate required by Section 5.5 hereof, the Finance Authority shall determine, by reference to the Project Account, if any, whether any portion of the authorized Loan/Grant Amount remains unexpended. If any of the Loan/Grant Amount remains unexpended, the funds shall be transferred by the Finance Authority to the appropriate account or fund in accordance with applicable law and the Borrower/Grantee shall have no right to access the funds.

Section 7.3 Further Assurances and Corrective Instruments. The Finance Authority and the Borrower/Grantee 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 and carrying out the intention hereof.

Section 7.4 Representatives of the Finance Authority or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Finance Authority or the Borrower/Grantee is required, or the Borrower/Grantee, or the Finance Authority is required to take some action at the request of any of them, such approval or such request shall be given for the Finance Authority or for the Borrower/Grantee, by an Authorized Officer of the Finance Authority or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.5 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13128 through 131199, as amended, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

Section 7.6 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin;

(b) Any contractor or subcontractor providing construction services in connection with the Project shall post a performance and payment bond in accordance with the requirements of NMSA 1978, § 13-4-18, as amended; and

(c) Any contractor or subcontractor providing construction services in connection with the Project shall comply with the prevailing wage laws in accordance with the requirements of NMSA 1978, § 13-4-11, as amended.

Section 7.7 Little Miller Act. To the extent NMSA 1978, § 13-4-1 et seq., (the “Little Miller Act”) is applicable to the Project, the Borrower/Grantee shall comply with the requirements of the “Little Miller Act”. If bonding requirements of the Little Miller Act are not applicable to the Project, the Borrower/Grantee will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Borrower/Grantee. Any sum or sums derived from said performance bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

#### ARTICLE VIII INSURANCE; NON-LIABILITY OF THE FINANCE AUTHORITY

Section 8.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State’s risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended, shall and hereby agrees to name the Finance Authority as additional insureds with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a Qualifying Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other Qualifying Entity to perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other Qualifying Entity that the Finance Authority is a third party beneficiary of such written agreement.

#### Section 8.2 Non-Liability of the Finance Authority and the CIB.

(a) The Finance Authority and the CIB shall not be liable in any manner for the Project, Borrower/Grantee’s use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Borrower/Grantee or any other owner or operator of the Project.

(b) The Finance Authority and the CIB shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the

Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

(c) To the extent permitted by law, the Borrower/Grantee shall and hereby agrees to indemnify and save the Finance Authority and the CIB 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 Agreement Term, from: (i) any act of negligence or other misconduct of the Borrower/Grantee, or breach of any covenant or warranty by the Borrower/Grantee 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/Grant Agreement proceeds and interest on the investment thereof. The Borrower/Grantee shall indemnify and save the Finance Authority and the CIB 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 CIB, shall defend the Finance Authority or the CIB, as applicable, in any such action or proceeding.

#### ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default Defined. Any one of the following shall be an “Event of Default” under this Agreement:

(a) Failure by the Borrower/Grantee to pay any amount required to be paid under this Agreement on the date on which it is due and payable; or

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the Finance Authority, unless the Finance Authority 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 but cannot be cured within the applicable thirty (30) day period, the Finance Authority will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of Force Majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 9.1(b) during the continuance of such inability (but Force Majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Borrower/Grantee contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is determined to be false or misleading in any material respect in the sole discretion of the Finance Authority; or

(d) A petition is filed against the Borrower/Grantee 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 shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests; or

(e) The Borrower/Grantee 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 Borrower/Grantee admits insolvency or bankruptcy or its inability to pay its debt as they become due or is generally not paying its debt as such debt 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 Borrower/Grantee 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 shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests; or

(g) Default by the Borrower/Grantee in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Borrower/Grantee to the Finance Authority.

Section 9.2 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee shall be paid only from available Pledged Revenues unless the Borrower/Grantee in its sole discretion pays the judgment from other available funds.

Section 9.3 Remedies on Default. Whenever any Event of Default has occurred and is continuing, and subject to Section 9.4 hereof, the Finance Authority may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Borrower/Grantee in this Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Borrower/Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;

(b) Terminate this Agreement;

(c) Cease disbursing any further amounts from the Project Account;

(d) Demand that the Borrower/Grantee immediately repay the Loan/Grant Amount or any portion thereof if such funds were not utilized in accordance with this Agreement;

(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority;

(f) Intervene in judicial proceedings that affect this Agreement or the Pledged Revenues;

(g) Cause the Borrower/Grantee to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(h) 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 Agreement or to enforce any other of their rights hereunder.

The Borrower/Grantee shall be responsible for reimbursing the Finance Authority for any and all fees and costs incurred in enforcing the terms of this Agreement.

Section 9.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or 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 Borrower/Grantee or the Finance Authority to exercise any remedy reserved in this Article IX, it shall not be necessary to give any notice, other than such notice as may be required in this Article IX.

Section 9.5 Waivers of Events of Default. The Finance Authority may, in its discretion, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Finance Authority in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority 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 shall be restored to its former position and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 9.6 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 9.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Borrower/Grantee shall default under any of the provisions hereof, and the Finance Authority 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

Borrower/Grantee herein contained, the Borrower/Grantee agrees that it shall, on demand therefor, pay to the Finance Authority the fees of such attorneys and such other expenses so incurred, to the extent such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Borrower/Grantee under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE X MISCELLANEOUS

Section 10.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

Luna County  
Attn.: County Manager  
700 South Silver Avenue  
Deming, New Mexico 88030

If to the Finance Authority, to:

New Mexico Finance Authority  
Attn.: Chief Executive Officer  
207 Shelby Street  
Santa Fe, New Mexico 87501

The Borrower/Grantee or the Finance Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices; certificates or other communications shall be sent.

Section 10.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Finance Authority and the Borrower/Grantee and their respective successors and assigns, if any.

Section 10.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the Finance Authority and the Borrower/Grantee on the Effective Date constitute the entire agreement of the parties regarding the Loan/Grant and the funding of the Project through the Loan/Grant as of the Effective Date, and the terms of this Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Agreement.

Section 10.4 Amendments. This Agreement may be amended only with the written consent of all of the parties to this Agreement. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Agreement may be

given by an Authorized Officer of the Finance Authority. The execution of any such consent by an Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Agreement.

Section 10.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority or the CIB, or against any officer, employee, director or member of the Borrower/Grantee, 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 or member of the Borrower/Grantee, the CIB or of the Finance Authority is hereby expressly waived and released by the Borrower/Grantee, the CIB and the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 10.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments, 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 10.7 Execution in Counterparts. This 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 10.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. Pursuant to NMSA 1978, § 6-21-26, as amended, the venue for any proceedings or any other action or procedure against the Finance Authority shall be in Santa Fe County.

Section 10.9 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 Agreement.

Section 10.10 Application of Act and Board Rules. The Finance Authority and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and the Board Rules are incorporated into this Agreement by reference.

Section 10.11 CONSENT TO JURISDICTION. THE BORROWER/GRANTEE IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO SECTION 6-21-26, NMSA.

*[Remainder of page intentionally left blank.]*

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Finance Authority, has executed this Agreement, which was approved by the CIB on May 20, 2021 and by the Finance Authority's Board of Directors on June 24, 2021, in its corporate name by its duly Authorized Officer; and the Borrower/Grantee has caused this Agreement to be executed and attested by duly Authorized Officers thereof. All of the above are effective as of the date first above written.

FINANCE AUTHORITY:

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

Prepared for Execution by Officers of the  
New Mexico Finance Authority:

SUTIN, THAYER & BROWNE  
A PROFESSIONAL CORPORATION

By \_\_\_\_\_  
Suzanne Wood Bruckner

Approved for Execution by Officers of the  
New Mexico Finance Authority:

By \_\_\_\_\_  
Daniel C. Opperman,  
Finance Authority Chief Legal Officer

BORROWER/GRANTEE:

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

ATTEST:

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

6081971

EXHIBIT "A"

TERM SHEET

\$88,000 COLONIAS INFRASTRUCTURE PROJECT LOAN/GRANT TO LUNA COUNTY,  
NEW MEXICO, CIF-5537

Project Description: The Project is infrastructure development in accordance with the Act consisting of improvements to a water system, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies and is more specifically described as a preliminary engineering report for the Keeler Farm People's Water Coop water system to include recommendations for regionalization and shall include such other related work and revisions necessary to complete the Project.

Grant Amount: \$79,200

Loan Amount: \$8,800

Interest Component: 0%

Pledged Revenues: The revenues of fifty percent (50%) of the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax enacted pursuant to Section 7-20E-9, NMSA 1978, as amended, and the Tax Ordinance, distributed to the Borrower/Grantee and pledged to the payment of the Loan Payments pursuant to the Resolution and this Agreement

Authorizing Legislation: Borrower/Grantee Resolution No. 21-72, adopted November 10, 2021

Outstanding Parity Debt: NMFA CIF-4919, Maturing 2041

Local Match: \$8,800

Closing Date: December 17, 2021

Project Account Deposit: \$88,000

Conditions to be satisfied prior to first disbursement of the Loan/Grant Amount:

Delivery to Finance Authority of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the County Clerk of the Borrower/Grantee, (ii) a copy of the minutes or record of the Meeting, approved and signed by the Chair and attested to by the County Clerk of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant:

All Conditions defined in the Agreement.

EXHIBIT "B"

FORM OF REQUISITION  
(Colonias Infrastructure Project Fund)

RE: \$88,000 Loan/Grant Agreement by and between the New Mexico Finance Authority and Luna County, New Mexico, as Borrower/Grantee (the "Agreement").

Loan/Grant No. CIF-5537 Closing Date: December 17, 2021

TO: NEW MEXICO FINANCE AUTHORITY, colonias@nmfa.net

You are hereby authorized to disburse from the Project Account – Luna County with regard to the above-referenced Agreement, the following:

I. PAYMENT INFORMATION

REQUISITION NO. \_\_\_\_\_ PAYMENT AMOUNT: \$ \_\_\_\_\_

PAYEE'S NAME: \_\_\_\_\_

PAYEE'S ADDRESS: \_\_\_\_\_

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II. REQUISITION INFORMATION (complete for all payments)

- *Attach proof of expenditures (cancelled check, wire transfer receipt, bank ledger, etc.).*
- *List all Vendors, Payment Purposes, or Eligible Item Categories below or attach separate page or spreadsheet if needed.*

Vendor Name \_\_\_\_\_

Total Amount \$ \_\_\_\_\_ Invoice No.(s) \_\_\_\_\_

Purpose of Payment \_\_\_\_\_

Eligible Item Category \_\_\_\_\_

Vendor Name \_\_\_\_\_

Total Amount \$ \_\_\_\_\_ Invoice No.(s) \_\_\_\_\_

Purpose of Payment \_\_\_\_\_

Eligible Item Category \_\_\_\_\_

Vendor Name \_\_\_\_\_

Total Amount \$ \_\_\_\_\_ Invoice No.(s) \_\_\_\_\_

Purpose of Payment \_\_\_\_\_

Eligible Item Category \_\_\_\_\_

---

III. WIRING INFORMATION:

Loan/Grant Agreement  
Luna County, Loan/Grant No. CIF-5537

BANK NAME:	
ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: \$ \_\_\_\_\_  
*Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.*

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: \$ \_\_\_\_\_

TOTAL REQUIRED MATCH: \$8,800

V. VERIFICATION AND AUTHORIZATION

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the Finance Authority pursuant to the Colonias Infrastructure Act to the Borrower/Grantee within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Project Account – Luna County. All representations contained in the Agreement, the related closing documents remain true and correct, and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant are to be used to pay the costs of Eligible Items, as defined in the Agreement. Eligible Items include (1) planning, designing, construction, improving or expanding a qualified project; (2) developing engineering feasibility reports for Qualified Projects; (3) inspecting construction of Qualified Projects; (4) providing professional services; (5) completing environmental assessments or archeological clearances and other surveys for Qualified Projects; (6) acquiring land, water rights, easements or rights of way; (7) eligible legal costs and eligible fiscal agent fees associated with development of Qualified Projects, within limits set by the Colonias Infrastructure Board (“CIB”).

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved by all entities required by the CIB and the New Mexico Finance Authority in their sole discretion to approve such plans and specifications, has or will be acquired in compliance with applicable procurement laws and regulations and has or will be inspected and approved in accordance with applicable laws and regulations.

Capitalized terms used herein, are used as defined or used in the Loan/Grant Agreement.

DATE: \_\_\_\_\_

\_\_\_\_\_  
 AUTHORIZED OFFICER  
 (As Provided in the Loan/Grant Agreement)  
 Print Name: \_\_\_\_\_  
 Print Title: \_\_\_\_\_

EXHIBIT "C"

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount shall be payable by the Borrower/Grantee to the Finance Authority in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2024 and ending June 1, 2043. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty.

[ATTACH INTERIM DEBT SERVICE SCHEDULE]



EXHIBIT "E"

FORM OF CERTIFICATE OF COMPLETION

RE: \$88,000 Agreement by and between the Finance Authority and Luna County, New Mexico as Borrower/Grantee (the "Agreement")

Loan/Grant No. CIF-5537

Closing Date: December 17, 2021

TO: NEW MEXICO FINANCE AUTHORITY, colonias@nmfa.net

I, \_\_\_\_\_, the \_\_\_\_\_ of the  
[Name] [Title or position]

Borrower/Grantee, hereby certify as follows:

1. The project described in the Agreement (the "Project"), or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on \_\_\_\_\_, 20\_\_.

2. The total cost of the Project was \$ \_\_\_\_\_.

3. Cost of the Project paid from the Loan/Grant Amount was \$ \_\_\_\_\_.

4. The portion of the Loan/Grant Amount unexpended for the Project is \$ \_\_\_\_\_.

5. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

LUNA COUNTY, NEW MEXICO

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

Its: \_\_\_\_\_

EXHIBIT "F"

DOCUMENTS

1. Open Meetings Act Resolution No. 21-20 adopted by the Borrower/Grantee on February 11, 2021;
2. Resolution No. 21-72 adopted on November 10, 2021, Agenda, and Affidavit of Publication of Notice of Adoption of Resolution in the *Deming Headlight*;
3. Loan/Grant Agreement;
4. General and No Litigation Certificate of the Borrower/Grantee;
5. Delivery, Deposit and Cross-Receipt Certificate;
6. Right of Way Certificate (to be executed prior to construction funding);
7. Borrower's Counsel Opinion;
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan/Grant Counsel to the Finance Authority;
9. Finance Authority Application and Project Approval (informational only).

\$88,000  
LUNA COUNTY, NEW MEXICO  
COLONIAS INFRASTRUCTURE LOAN/GRANT  
NO. CIF-5537

Closing Date: December 17, 2021

TRANSCRIPT OF PROCEEDINGS  
INDEX

1. Open Meeting Act Resolution No. 21-01 adopted January 14, 2021
2. Resolution No. 21-72, adopted November 10, 2021, Agenda, and the Affidavit of Publication of the Notice of Adoption of Resolution in the *Deming Headlight*
3. Loan/Grant Agreement
4. General and No Litigation Certificate
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate
7. Borrower's Counsel Opinion
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan/Grant Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)

TRANSCRIPT DISTRIBUTION LIST

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

\$88,000  
LUNA COUNTY, NEW MEXICO  
COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT  
No. CIF-5537

STATE OF NEW MEXICO	)	<u>GENERAL AND</u>
	) ss.	<u>NO LITIGATION</u>
COUNTY OF LUNA	)	<u>CERTIFICATE</u>

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Chair, County Clerk and Budget and Procurement Director (Finance) for Luna County, New Mexico (the "Borrower/Grantee") in the State of New Mexico (the "State"):

Capitalized terms used in this Certificate have the same meaning as defined in Resolution No. 21-72 adopted by the Governing Body of the Borrower/Grantee on November 10, 2021 (the "Resolution") unless otherwise defined in this Certificate or the context requires otherwise.

1. The Borrower/Grantee is a duly organized and existing county under the laws of the State of New Mexico.

2. There exists within the boundaries of the Borrower/Grantee, Keeler Farm, a community that has been designated by the Borrower/Grantee as a Colonia within the meaning of the Colonias Infrastructure Act, and the Borrower/Grantee will be receiving the Loan/Grant for the benefit of Keeler Farm and its residents.

3. From at least June 24, 2021 to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers of the Borrower/Grantee:

Chair:	Barbara Reedy
Commissioners:	Linda Smrkovsky John Sweetser
County Manager:	Chris Brice
Budget & Procurement Director:	Joanne C. Hethcox
County Clerk:	Berenda McWright
Treasurer:	Kristie Hobbs
County Attorney:	Charles C. Kretke, Esq.

4. Based on data collected during the 2020 Census, the population of Luna County is at least 75% English speaking.

5. Notice of adoption of the Resolution was published in English in the *Deming Headlight*, a newspaper qualified to publish legal notices that is of general circulation in Luna County, New Mexico.

6. There is no reason within our knowledge and belief after due investigation, why the Borrower/Grantee may not enter into the Loan/Grant Agreement with the New Mexico Finance Authority, as authorized by the Resolution.

7. 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 Borrower/Grantee since the date of the Resolution.

8. To the best of our knowledge and belief after due investigation, none of the events of default referred to in Article IX of the Loan/Grant Agreement has occurred.

9. There is no threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to our knowledge is there any basis therefor, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of the Pledged Revenues to pay the principal, interest or administrative fees on the Loan/Grant Agreement, or in any way materially adversely affecting or questioning (a) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain expenses as described therein, (b) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee taken with respect to the Resolution or the Loan/Grant Agreement, (c) the execution and delivery of the Loan/Grant Agreement, or (d) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.

10. The Borrower/Grantee 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 Borrower/Grantee contained in the Loan/Grant Agreement and in the Resolution are true and correct as of the date hereof.

11. The Borrower/Grantee 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.

12. To our knowledge and belief after due investigation, neither the Chair, the County Clerk, any member of the Governing Body of the Borrower/Grantee, nor any other officer, employee or other agent of the Borrower/Grantee 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.

13. Regular meetings of the Borrower/Grantee's Governing Body and the meeting at which the Resolution was adopted have been conducted via Zoom conference call.

14. The Borrower/Grantee's Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Borrower/Grantee's Governing Body in connection with the Loan/Grant Agreement. The Open Meetings Act Resolution adopted and approved by the Governing Body on January 14, 2021 establishes notice standards for meetings of the Governing Body. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Resolution and the Loan/Grant Agreement was taken at meetings held in compliance with the Open Meetings Act Resolution No. 21-01 which resolution was effective on November 10, 2021 and has not been amended, repealed or rescinded.

15. The Borrower/Grantee is in compliance with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended.

16. Ordinance No. 21, as amended, effective January 1, 1995, 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.

17. The Chair and the County Clerk, on the date of the signing of the Loan/Grant Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Borrower/Grantee authorized to execute the Loan/Grant Agreement.

18. This Certificate is for the benefit of the Finance Authority and the Colonias Infrastructure Board.

19. This Certificate may be executed in counterparts.

*[Signature page follows.]*

WITNESS our signatures and the seal of the Borrower/Grantee this 17th day of December, 2021.

(SEAL)

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

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

6081981





\$88,000  
LUNA COUNTY, NEW MEXICO  
COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT  
NO. CIF-5537

RIGHT-OF-WAY CERTIFICATE

The undersigned on behalf of Luna County, New Mexico (the "Borrower/Grantee"), a county in the State of New Mexico, hereby certifies except as noted in item 3 below:

1. That the Borrower/Grantee or Keeler Farm is the owner in fee simple of the lands needed for the design of the facilities to be designed with the proceeds of the above-referenced Loan/Grant made by the New Mexico Finance Authority (the "Project"), or that the Borrower/Grantee or Keeler Farm has acquired and presently holds continuous and adequate rights-of-way on lands owned by others that are needed for the Project, whether public or private, and such omissions, defects, or restrictions as may exist will in no substantial way or manner endanger the value or the operation of the Project, or that the Borrower/Grantee does not require titles, easements, rights of way, or permits to complete the Project.
  
2. That the attached map shows the location of all lands and rights-of-way needed for the Project, which lands and rights-of-way the Borrower/Grantee or Keeler Farm has acquired and now holds by purchase or dedication, by right of use or adverse possession, or by legal conveyances such as right-of-way or easement deeds, permits, or other instruments.
  
3. Exceptions: [NONE]

---

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate on behalf of Luna County, New Mexico as of this 17<sup>th</sup> day of December, 2021.

---

Charles D. Kretek, Esq.  
Attorney for Borrower/Grantee,  
700 South Silver Avenue  
Deming, NM 88030

6081985

[COUNSEL LETTERHEAD]

FINAL OPINION OF COUNSEL

To: New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501

Re: Luna County, New Mexico  
\$88,000 Loan/Grant No. CIF-5537

Ladies and Gentlemen:

I am the county attorney for Luna County, New Mexico (the "Borrower/Grantee") and provide this opinion in connection with the above-referenced Loan/Grant. I am licensed to practice law and in good standing in the State of New Mexico. I provide this opinion in my role as counsel to the Borrower/Grantee, understanding that the New Mexico Finance Authority ("Lender/Grantor") and the New Mexico Colonias Infrastructure Board ("CIB") are relying on this opinion letter and but for this opinion letter, the Loan/Grant would not be approved.

Capitalized terms used in this Opinion have the same meaning as defined in Resolution No. 21-72 adopted by the Governing Body of the Borrower/Grantee on November 10, 2021 (the "Resolution") unless otherwise defined in this Opinion or the context requires otherwise.

I hereby certify that I have examined:

- (1) The Luna County, New Mexico Colonias Infrastructure Project Fund Application dated February 11, 2021 and the New Mexico Colonias Infrastructure Board Approval dated May 20, 2021 and the New Mexico Finance Authority Approval dated June 24, 2021 for Loan/Grant No. CIF-5537 (the "Application" and the "Approval," respectively), relating to the Project.
- (2) The statutes creating the Borrower/Grantee.
- (3) The Annual Open Meetings Act Resolution or resolutions of the Borrower/Grantee in effect on November 10, 2021 and on December 17, 2021.
- (4) The proceedings of the Governing Body (including all agendas, minutes, resolutions, ordinances and publications) which authorize the Loan/Grant application, the Project development, the budget for the Project, and the

contracts with the various Project professionals including but not limited to architects, engineers, planners and contractors.

- (5) Proceedings of the Borrower/Grantee from the date of the Application to the date of this Opinion, including, without limiting the generality of the foregoing, the action of the Borrower/Grantee relating to (a) the selection of its Chair, Board of County Commissioners and County Clerk; (b) the adoption of the Borrower/Grantee's Annual Open Meetings Act Resolution or resolutions; (c) the adoption of ordinances or resolutions governing the operation of the Project; (d) cost estimates for the Project; (e) the adoption of ordinances, resolutions and regulations for the furnishing of service to customers; (f) the proposed operating budget for services to be provided, in whole or in part, by means of the Project; (g) the proposal to finance the Project, in whole or in part, with a Loan/Grant made by the CIB, acting through the Finance Authority; (h) the Resolution authorizing the Chair to execute necessary documents to obtain the Loan/Grant for the Project; (i) all necessary approvals for the Project from federal, State or local authorities; and (j) the execution and delivery of the Loan/Grant Agreement evidencing such Loan/Grant.
- (6) The Resolution and the Loan/Grant Agreement providing that the Lender/Grantor on behalf of the Borrower/Grantee shall maintain a book Project Account on behalf of the Borrower/Grantee and shall cause the disbursement of the Loan/Grant Amount as provided in Article IV of the Loan/Grant Agreement.
- (7) The records and files of all offices in which there might be recorded, filed, or indexed, any liens of any nature whatsoever, affecting the title to any real property to be acquired with the Loan/Grant proceeds, or on which will be located any Project property to be acquired with the Loan/Grant proceeds.
- (8) Ordinance No. 21, originally recorded by the Borrower/Grantee on September 14, 1992, and its amendment effective January 1, 1995, and imposing a one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax, fifty percent (50%) of the receipts of which are pledged to secure the Loan/Grant.

Based upon my examination of the foregoing, it is my opinion that:

- A. The Borrower/Grantee is a duly organized and existing county under the laws of the State of New Mexico.
- B. There exists within the boundaries of the Borrower/Grantee, Keeler Farm, a community that has been designated by the Borrower/Grantee as a Colonia within the meaning of the Colonias Infrastructure Act and the Borrower/Grantee will be receiving the Loan/Grant for the benefit of Keeler Farm and its residents.

- C. The ordinances, resolutions, rules and regulations governing the operation of the Project have been duly adopted and are now in full force and effect.
- D. The Authorized Officers of the Borrower/Grantee were duly and validly elected or appointed and are empowered to act for the Borrower/Grantee.
- E. The Borrower/Grantee has corporate power:
  - (1) to design and complete the Project;
  - (2) to execute and deliver Loan/Grant documents including those identified above;
  - (3) to perform all acts required by such Loan/Grant documents to be done by it; and
  - (4) to own, operate and maintain the Project during its Useful Life.
- F. All proceedings of the Borrower/Grantee, its elected and appointed officers, and employees, required or necessary to be taken in connection with the authorization of the actions specified above have been duly taken and all such authorizations are presently in full force and effect.
- G. 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 Borrower/Grantee to carry out and enforce the provisions of the Loan/Grant Agreement.
- H. The Resolution is a valid and binding special limited obligation of the Borrower/Grantee enforceable in accordance with its terms and creates the pledge of the County Local Option Gross Receipts Tax of the Borrower/Grantee, as described in the Loan/Grant Agreement (the "Pledged Revenues") which it purports to create.
- I. The Loan/Grant Agreement is a valid and binding special, limited obligation of the Borrower/Grantee, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.
- J. No event will result from the execution and delivery of the Loan/Grant Agreement that constitutes a default or an event of default under either the Loan/Grant Agreement or the Resolution, and no event of default and no default under the Loan/Grant Agreement or the Resolution has occurred and is continuing on the date of this Opinion.

- K. The Borrower/Grantee 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/Grant Agreement to have been authorized, approved, performed or consummated by the Borrower/Grantee at or prior to the date of this Opinion. The Borrower/Grantee has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution and the Loan/Grant Agreement.
- L. 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/Grant Agreement or any of the actions required to be taken by the Resolution or the Loan/Grant Agreement to the date of this Opinion have been obtained and are in full force and effect.
- M. Neither the Borrower/Grantee's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Loan/Grant Agreement does or will conflict with, or constitutes a breach by the Borrower/Grantee of, or default by the Borrower/Grantee under any law, court decree or order, governmental regulation, rule or order, ordinance, resolution, agreement, indenture, mortgage or other instrument to which the Borrower/Grantee is subject or by which it is bound.
- N. There is no actual or threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to my knowledge, is there any basis therefore, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Borrower/Grantee, (b) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain costs of the Finance Authority and the CIB associated with the administration of the Colonias Infrastructure Project Fund, (c) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee with respect to the Resolution or the Loan/Grant Agreement, (d) the execution and delivery of the Loan/Grant Agreement, (e) the authority of the Borrower/Grantee to repay the Loan Amount, or (f) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.
- O. There are no recorded liens of any nature whatsoever affecting the title to any real property upon which the Project to be designed with the proceeds of the Loan/Grant will be located.
- P. No legal proceedings have been instituted or are pending, and to my knowledge none are threatened, whether or not the Borrower/Grantee is named as a party in such proceedings, which would affect the Borrower/Grantee's interest in the real property upon which the Project to be designed with the proceeds of the

Loan/Grant will be located, and there are no judgments against the Borrower/Grantee or liens against any property of the Borrower/Grantee that would impair the Borrower/Grantee's ability to complete the Project.

- Q. The Borrower/Grantee and other qualified entities have acquired all of the necessary land rights, easements and rights-of-way for the Project and the Borrower/Grantee now has sufficient, adequate and continuous rights-of-way, including rights-of-way granted to the Borrower/Grantee from such qualified entity, to permit the design, construction, installation, operation and maintenance of the Project.
- R. The Borrower/Grantee has complied with all of the requirements of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, applicable to the Project on or prior to the date of this opinion letter.
- S. Ordinance No. 21, as amended effective January 1, 1995 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.

Dated this 17<sup>th</sup> day of December, 2021.

---

Charles C. Kretek, Esq.  
County Attorney for Borrower/Grantee,  
Luna County, New Mexico

6082075

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)  
MICHAEL G. SUTIN (1935-2019)  
JAY D. HERTZ (1934-2020)

ROBERT G. HEYMAN (Of Counsel)

NOE ASTORGA-CORRAL  
ANNE P. BROWNE

SUZANNE WOOD BRUCKNER  
MARIA MONTOYA CHAVEZ  
AMANDA E. CVINAR  
JOHN A. DRAGOVITS  
EDUARDO A. DUFFY  
ALEXANDER G. ELBORN  
TINA MUSCARELLA GOOCH  
JUSTIN L. GREENE  
JESSE D. HALE  
MINGJIE L. HOEMMEN  
WADE L. JACKSON  
DAVID H. JOHNSON  
ROBERT J. JOHNSTON  
ISAAC A. LEON

CHRISTINA M. LOONEY  
STEVAN DOUGLAS LOONEY  
DEBORAH E. MANN  
JESSICA R. MARTIN  
LYNN E. MOSTOLLER  
CHARLES J. PIECHOTA  
JAY D. ROSENBLUM  
FRANK C. SALAZAR  
JUSTIN R. SAWYER  
ANDREW J. SIMONS  
BARBARA G. STEPHENSON  
MARIPOSA PADILLA SIVAGE  
BENJAMIN E. THOMAS

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SANTA FE, NEW MEXICO 87504  
505-988-5521  
FAX 505-982-5297

WWW.SUTINFIRM.COM

December 17, 2021

New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501

Re: \$88,000 Colonias Infrastructure Project Fund Loan/Grant to Luna County, New Mexico, CIF-5537

Ladies and Gentlemen:

We have acted as Loan/Grant Counsel to the New Mexico Finance Authority in connection with the \$88,000 Colonias Infrastructure Project Fund Loan/Grant Agreement dated December 17, 2021 (the "Loan/Grant Agreement") by and between Luna County, New Mexico (the "Borrower/Grantee") and the New Mexico Finance Authority (the "Lender/Grantor"). The Loan/Grant Agreement is executed and delivered by the Borrower/Grantee pursuant to Sections 6-30-1 through 6-30-8, NMSA 1978, as amended, and the Borrower/Grantee's Resolution No. 21-72, adopted on November 10, 2021 (the "Resolution"). The Loan/Grant Agreement has been executed and delivered to provide funds for a preliminary engineering report for the Keeler Farm People's Water Coop water system including recommendations for regionalization, as described in the Loan/Grant Agreement.

We have examined the Resolution and such other law and certified proceedings and other documents as we deem necessary to deliver this opinion. As to questions of fact material to the opinions set forth herein, we have relied upon representations of the Borrower/Grantee 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 Borrower/Grantee'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 judicial discretion in accordance with general principles of equity and the assumptions, qualifications and limitations contained in this opinion:

I. The Resolution is a valid and binding special limited obligation of the Borrower/Grantee enforceable in accordance with its terms and creates the pledge of the County

Page 2

Local Option Gross Receipts Tax of the Borrower/Grantee, as described in the Loan/Grant Agreement (the “Pledged Revenues”) which it purports to create.

2. The Loan/Grant Agreement is a valid and binding special, limited obligation of the Borrower/Grantee, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.

3. The Loan/Grant Agreement is payable solely from, and such payment is secured by a valid and binding subordinate lien on the distribution on the Pledged Revenues subordinate to the lien thereon of other outstanding obligations secured by the Pledged Revenues and on a parity with the lien thereon of other outstanding obligations secured by a subordinate lien on the Pledged Revenues. The Lender/Grantor has no right to have taxes levied by the Borrower/Grantee for the payment of principal of or interest on the Loan/Grant Agreement and the Loan/Grant Agreement does not represent or constitute a debt or a pledge of, or a charge against, the general credit of the Governmental Unit.

4. The Loan/Grant Agreement is a valid and binding obligation of the Lender/Grantor and is enforceable in accordance with its terms and provisions.

We express no opinion with respect to the provisions of the Loan/Grant Agreement and the Resolution with respect to indemnification provisions requiring that amendments be in writing or payment of attorneys’ fees. 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. 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 Lender/Grantor and the Borrower/Grantee with the terms of the Loan/Grant Agreement.

The foregoing opinion 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

**DETAILED BOND DEBT SERVICE**

**Luna County  
CIF-5537 Peoples Water Coop PER**

**Loan Component (LOAN)**

<i>Period Ending</i>	<i>Principal</i>	<i>Interest</i>	<i>Debt Service</i>
06/01/2024	440		440
06/01/2025	440		440
06/01/2026	440		440
06/01/2027	440		440
06/01/2028	440		440
06/01/2029	440		440
06/01/2030	440		440
06/01/2031	440		440
06/01/2032	440		440
06/01/2033	440		440
06/01/2034	440		440
06/01/2035	440		440
06/01/2036	440		440
06/01/2037	440		440
06/01/2038	440		440
06/01/2039	440		440
06/01/2040	440		440
06/01/2041	440		440
06/01/2042	440		440
06/01/2043	440		440
	8,800	0	8,800



Stantec Consulting Services Inc.  
 6100 Seagull Street NE Suite 102 B  
 Albuquerque NM 87109-2500  
 Tel: (505) 275-0022  
 www.stantec.com

Notes:  
 1. THE EXTENTS OF THE PROJECT ARE APPROXIMATE.

Client/Project  
 LUNA COUNTY, REPRESENTING THE  
 PEOPLE'S WATER CO-OP  
  
 PRELIMINARY ENGINEERING REPORT  
 AND ENVIRONMENTAL REVIEW REPORT

Project No.  
 1813

Title  
 LOCATION MAP

Revision	Date
-	2021.02.19
Reference Sheet	Figure No.
-	1



A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY," OR THE "LENDER/GRANTOR") AND LUNA COUNTY, NEW MEXICO (THE "BORROWER/GRANTEE"), FOR THE BENEFIT OF ROCKHOUND, IN THE TOTAL AMOUNT OF \$115,000, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF DESIGN FOR ROADWAY RE-CONSTRUCTION IMPROVEMENTS FOR LA PAZ, TIGUA, PAQUIME, CASAS GRANDES, AND MANZANO STREETS, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$11,500 SOLELY FROM FIFTY PERCENT (50%) OF A ONE-EIGHTH OF ONE PERCENT (0.125%) INCREMENT OF COUNTY LOCAL OPTION GROSS RECEIPTS TAX AND ACCEPTANCE OF A GRANT AMOUNT OF \$103,500; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT 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/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise.

WHEREAS, the CIB is a public body duly organized and created under and pursuant to the laws of the State of New Mexico (the "State"), particularly the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended, (the "Colonias Infrastructure Act" or the "Act"); and

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1, through 6-21-31, as amended (the "Finance Authority Act"); and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing county under the general laws of the State and more specifically, Section 4-16-1, NMSA 1978, as amended; and

WHEREAS, the Act creates the Colonias Infrastructure Project Fund (the "Fund") in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the CIB; and

WHEREAS, there exists within the boundaries of the Borrower/Grantee Rockhound, a community that has been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of Rockhound and the public they serve; and

WHEREAS, the Borrower/Grantee submitted an application dated February 11, 2021 for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on May 20, 2021 recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer the Loan/Grant Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on June 24, 2021; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and Rockhound that the Borrower/Grantee enter into an Agreement with the Lender/Grantor to borrow \$11,500 from the Lender/Grantor and to accept a grant in the amount of \$103,500 from the Lender/Grantor to finance the costs of design for roadway re-construction improvements for La Paz, Tigua, Paquime, Casas Grandes and Manzano Streets, this project being more particularly described in the Term Sheet; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with the Local Match and other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee, Rockhound, and the constituent public they serve that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the CIB or the Finance Authority or a debt or pledge of the full faith and credit of the Borrower/Grantee, the CIB, the Finance Authority or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the County Clerk this Resolution and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Local Match is now available to the Borrower/Grantee to complete the Project; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant 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. Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Resolution 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 Resolution including the foregoing recitals, unless the context clearly requires otherwise. Capitalized terms not defined herein shall have the meaning given them by the Loan/Grant Agreement.

“Agreement” or “Loan/Grant Agreement” means the Loan/Grant Agreement and any amendments or supplements thereto, including the Exhibits attached thereto.

“Authorized Officers” means, any one or more of the Chair, County Manager, Budget and Procurement Director, and County Clerk thereof.

“Borrower/Grantee” means Luna County, New Mexico.

“CIB” means the Colonias Infrastructure Board created by the Act.

“Closing Date” means the date of execution of the Loan/Grant Agreement by the Borrower/Grantee and the Finance Authority.

“Colonia” or “Colonias” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly Rockhound.

“Colonias Infrastructure Project Fund” or “Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Conditions” has the meaning given to that term in the Loan/Grant Agreement.

“Completion Date” means the date of final payment of the cost of the Project.

“Eligible Architectural, Engineering and Construction Management Fees” means the fees and costs associated with the architectural, engineering and construction project management

costs for services rendered to the Borrower/Grantee for the transaction of the Project and those directly associated with the Project, in an amount up to twelve percent (12%) of the Loan/Grant Amount.

“Eligible Fees for Other Professional Services” means the fees and costs incurred for other professional services necessary to the completion of the Project including, but not limited to, services provided by accounting and auditing firms, hydrologists and surveyors. Such fees may not exceed five percent (5%) of the Loan/Grant Amount.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by the Loan/Grant Agreement, in an amount not exceeding five percent (5%) of the Loan/Grant Amount.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the qualified project, in an amount not exceeding ten percent (10%) of the Loan/Grant Amount, but does not include adjudication services.

“Finance Authority” means the New Mexico Finance Authority.

“Fiscal Year” means the period commencing on July 1 of 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 Borrower/Grantee as its fiscal year.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the Board of County Commissioners of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall equal 90% of the Amount disbursed not to exceed \$103,500.

“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.

“Lender/Grantor” means the Finance Authority.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than \$11,500.

“Loan/Grant” or “Loan/Grant Amount” means the amount provided to the Borrower/Grantee as the Grant Amount and borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project. The value of the Loan/Grant shall not equal more than \$115,000.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$11,500.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operation and Maintenance Expenses” has the meaning given to that term in the Loan/Grant Agreement.

“Pledged Revenues” means fifty percent (50%) of the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax enacted pursuant to Section 7-20E-9, NMSA 1978, as amended, and the Tax Ordinance, distributed to the Borrower/Grantee and pledged to the payment of the Loan Payments pursuant to this Resolution and the Loan/Grant Agreement and described in the Term Sheet.

“Policies” means the Colonias Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

“Project” means the project described in the Term Sheet.

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant

Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonias infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means this Resolution as it may be supplemented or amended from time to time.

“Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, Sections 2.91.2.1 through 2.91.2.18 NMAC.

“State” means the State of New Mexico.

“Tax Ordinance” means Ordinance No. 21, as amended, passed and approved by the Borrower/Grantee pursuant to Section 7-20E-9, NMSA 1978, as amended, which imposes a one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax on the gross receipts of persons engaging in business within the Borrower/Grantee, effective January 1, 1993, originally imposed what was known as the third increment of County Local Option Gross Receipts Tax. Pursuant to Laws 2019, Chapter 274, § 16, the County Local Option Gross Receipt Tax imposed by Ordinance No. 21 is no longer identifiable as the third increment, and instead comprises one-eighth of one percent (.125%) of the maximum rate of county gross receipts tax that may be imposed under Section 7-20E-9, NMSA 1978, as amended, of one and three-quarters percent (1.75%), fifty percent (50%) of which is pledged to the Loan.

“Term Sheet” means Exhibit “A” attached to the Loan/Grant Agreement.

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was planned, which is twenty years.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Borrower/Grantee and officers of the Borrower/Grantee directed toward the acquisition and completion of the Project, the pledge of the Pledged Revenues to payment of amounts due under the Loan/Grant Agreement, and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition and completion of the Project and the method of funding the Project through

execution and delivery of the Loan/Grant Agreement and the other documents related to the transaction are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee, Rockhound, and the public they serve.

Section 4. Findings. The Governing Body 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 Borrower/Grantee, Rockhound and public they serve.

B. Moneys available and on hand for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring and completing the Project but, together with the Loan/Grant Amount, are sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary, convenient and in furtherance of the governmental purposes of the Borrower/Grantee, and in the interest of the public health, safety, and welfare of the constituent public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, the Local Match and other amounts available to the Borrower/Grantee, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life.

E. Together with the Loan/Grant Amount, and other amounts available to the Borrower/Grantee, the Local Match is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project.

F. The Lender/Grantor shall maintain on behalf of the Borrower/Grantee a separate Project Account as a book account only on behalf of the Borrower/Grantee and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee and other qualifying entities that are participants in the Project has title to or easements or rights of way on the real property upon which the Project is being constructed or located.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Borrower/Grantee and by the other qualifying entities involved in the Project and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of \$103,500 and borrowing the Loan Amount of \$11,500 to be utilized solely

for Eligible Items necessary to complete the Project, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of \$103,500 and the Loan shall be in the amount of \$11,500. Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body, at which this Resolution was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the County Clerk is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account. The Borrower/Grantee hereby consents to creation of the Project Account by the Finance Authority and further approves of the deposit or crediting of a portion of the Loan/Grant Amount to pay expenses. Until the Completion Date, the amount of the Loan/Grant credited to the Project Account shall be used and paid out solely for Eligible Items necessary to acquire and complete the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement.

B. Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. Following the Completion Date or the earlier expiration of the time allowed for disbursement of Loan/Grant funds as provided in the Loan/Grant Agreement, any balance remaining in the Project Account shall be transferred and deposited into the Colonias Infrastructure Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

C. CIB and Finance Authority Not Responsible. Borrower/Grantee shall apply the funds derived from the Loan/Grant Agreement as provided therein, and in particular Article V of the Loan/Grant Agreement. Neither the CIB nor the Finance Authority shall in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project. Lender/Grantor shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the

Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

Section 9. Payment of Loan Amount. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount directly from the Pledged Revenues to the Finance Authority as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount or other amounts due under the Loan/Grant Agreement.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount, the priority of which is consistent with that shown on the Term Sheet.

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/Grant 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 and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Resolution. This Resolution after its adoption may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the CIB and the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully 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, ordinances, resolutions, 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 Borrower/Grantee kept for that purpose, authenticated by the signatures of the

Chair and County Clerk of the Borrower/Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

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:

*[Remainder of page intentionally left blank.]*

*[Form of Notice of Adoption 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. 21-73, duly adopted and approved by the Board of County Commissioners of Luna County on November 10, 2021. A complete copy of the Resolution is available for public inspection during normal and regular business hours in the office of the County Clerk, at 700 South Silver Avenue, Deming, New Mexico.

The title of the Resolution is:

LUNA COUNTY, NEW MEXICO  
RESOLUTION NO. 21-73

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY (“FINANCE AUTHORITY,” OR THE “LENDER/GRANTOR”) AND LUNA COUNTY, NEW MEXICO (THE “BORROWER/GRANTEE”), FOR THE BENEFIT OF ROCKHOUND, IN THE TOTAL AMOUNT OF \$115,000, EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF DESIGN FOR ROADWAY RE-CONSTRUCTION IMPROVEMENTS FOR LA PAZ, TIGUA, PAQUIME, CASAS GRANDES, AND MANZANO STREETS, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT OF \$11,500 SOLELY FROM FIFTY PERCENT (50%) OF A ONE-EIGHTH OF ONE PERCENT (0.125%) INCREMENT OF COUNTY LOCAL OPTION GROSS RECEIPTS TAX AND ACCEPTANCE OF A GRANT AMOUNT OF \$103,500; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT 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/GRANT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

*[End of Form of Notice of Adoption for Publication]*

PASSED, APPROVED AND ADOPTED THIS 10<sup>th</sup> DAY OF NOVEMBER, 2021.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

ATTEST:

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

*[Remainder of page intentionally left blank.]*

Governing Body Member \_\_\_\_\_ then moved adoption of the foregoing Resolution, duly seconded by Governing Body Member \_\_\_\_\_.

The motion to adopt the 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 the motion, the Chair declared the motion carried and the 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 upon motion duly made, seconded and carried, was adjourned.

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

ATTEST:

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

*[Remainder of page intentionally left blank.]*

STATE OF NEW MEXICO

)  
) ss.  
)

COUNTY OF LUNA

I, Berenda McWright, the duly qualified and acting County Clerk of Luna County, New Mexico (the "Borrower/Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of County Commissioners of the Borrower/Grantee (the "Governing Body"), had and taken at a duly called regular meeting held over Zoom, on November 10, 2021 at the hour of 10:00 a.m., insofar as the same relate to the adoption of Resolution No. 21-73 and the execution and delivery of the proposed Loan/Grant Agreement, a copy 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. The 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 the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including the Borrower/Grantee's open meetings Resolution No. 21-01, adopted and approved on January 14, 2021 in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 2021.

LUNA COUNTY, NEW MEXICO

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

6082696

EXHIBIT "A"

Notice of Meeting, Meeting Agenda and Minutes, if available.

\$115,000

COLONIAS INFRASTRUCTURE PROJECT FUND  
LOAN/GRANT AGREEMENT

Dated

December 17, 2021

By and Between the

NEW MEXICO FINANCE AUTHORITY,

and

LUNA COUNTY, NEW MEXICO,  
as Borrower/Grantee.

COLONIAS INFRASTRUCTURE PROJECT FUND  
LOAN/GRANT AGREEMENT

THIS LOAN/GRANT AGREEMENT (the "Agreement") dated December 17, 2021, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and LUNA COUNTY, NEW MEXICO, (the "Borrower/Grantee") for the benefit of the Colonia of Rockhound (the "Colonia").

W I T N E S S E T H:

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State of New Mexico (the "State"), constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended, (the "Finance Authority Act"); and

WHEREAS, the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended (the "Colonias Infrastructure Act" or the "Act") creates the Colonias Infrastructure Project Fund (the "Fund") in the Finance Authority, to be administered by the Finance Authority to originate grants or loans to Qualified Entities for Qualified Projects recommended by the Colonias Infrastructure Board (the "CIB"); and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing county under the general laws of the State and more specifically, Section 4-16-1, NMSA 1978, as amended; and

WHEREAS, there exists within the boundaries of the Borrower/Grantee, the Colonia, a community that has been designated as a Colonia within the meaning of the Act; and

WHEREAS, the Borrower/Grantee will be receiving the Loan/Grant for the benefit of the Colonia and the constituent public the Borrower/Grantee serves; and

WHEREAS, the Borrower/Grantee is authorized to impose by ordinance a County Gross Receipts Tax pursuant to Section 7-20E-9, NMSA 1978; and

WHEREAS, the Borrower/Grantee has by the Tax Ordinance imposed the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax on the gross receipts of all persons engaging in business within the Borrower/Grantee which provides for the Pledged Revenues; and

WHEREAS, the County Local Option Gross Receipt Tax imposed by Tax Ordinance is no longer identifiable as the third increment, and instead comprises one-eighth of one percent (0.125%) of the maximum rate of county gross receipts tax that may be imposed under Section 7-20E-9, NMSA 1978, as amended, of one and three-quarters percent (1.75%), fifty percent (50%) of which is pledged to the Loan.

WHEREAS, pursuant to the Act, Board Rules and the Policies, the CIB authorizes the Finance Authority to make loans/grants to Qualified Entities from the Fund for recommended Qualified Projects; and

WHEREAS, the Borrower/Grantee submitted an application dated February 11, 2021 for the Project; and

WHEREAS, the CIB has determined that the Project is a qualifying Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on May 20, 2021 recommended to the Finance Authority that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, for the benefit of the Colonia and the CIB has recommended that the Finance Authority enter into and administer this Agreement; and

WHEREAS, the Finance Authority approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on June 24, 2021; and

WHEREAS, pursuant to the Board Rules and the Policies, the Borrower/Grantee will receive ten percent (10%) of its funding as a loan, in order to ensure the long-term solvency of the Fund by providing annual streams of revenue available to fund additional Qualified Projects; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan and grant a lien to the Finance Authority on the Pledged Revenues subordinate to all other liens thereon present and future, except that any present and future loans from the Finance Authority to the Borrower/Grantee pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 724A1 through 724A-11, as amended, shall be on a parity with this Loan/Grant; and

WHEREAS, the obligation of the Borrower/Grantee under this Agreement shall constitute a special, limited obligation of the Borrower/Grantee, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Borrower/Grantee or a charge upon the general credit or ad valorem taxing power of the Borrower/Grantee, or the State; and

WHEREAS, the execution, performance, and delivery of this Agreement have been authorized, approved, and directed by the Governing Body pursuant to the Resolution; and

WHEREAS, the execution and performance of this Agreement have been authorized, approved, and directed by all necessary and appropriate action of the CIB and the Finance Authority and their respective officers.

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 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 Agreement including the foregoing recitals, unless the context clearly requires otherwise.

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

“Application” means the Colonias Infrastructure Project Fund Application for Funding dated February 11, 2021 of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the Chair, County Manager, Budget and Procurement Director and County Clerk thereof; with respect to the Finance Authority, the Chair, Vice-Chair 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.

“Board Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, Sections 2.91.2.1 through 2.91.2.18 NMAC.

“Closing Date” means the date of execution of this Agreement by the Borrower/Grantee and the Finance Authority.

“Colonia” or “Colonias” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly the Colonia of Rockhound.

“Conditions” means (1) all readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the CIB; (2) all requirements set forth in the Term Sheet; (3) all requirements outlined in Section 2.1(p) and Section 5.1; (4) a determination that the disbursement applied for does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies.

“Department of Finance and Administration” or “DFA” means the department of finance and administration of the State.

“Eligible Architectural, Engineering and Construction Management Fees” means the fees and costs associated with the architectural, engineering and construction project management costs for services rendered to the Borrower/Grantee for the transaction of the Project and those directly associated with the Project, in an amount up to twelve percent (12%) of the Loan/Grant Amount.

“Eligible Fees for Other Professional Services” means the fees and costs incurred for other professional services necessary to the completion of the Project including, but not limited

to, services provided by accounting and auditing firms, hydrologists and surveyors. Such fees may not exceed five percent (5%) of the Loan/Grant Amount.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by this Agreement in an amount not exceeding five percent (5%) of the Loan/Grant Amount.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and constructing the Project, and, without limitation, Eligible Legal Costs, Eligible Fiscal Agent Fees, Eligible Architectural, Engineering and Construction Management Fees, and Eligible Fees for Other Professional Services.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the Qualified Project in an amount not exceeding ten percent (10%) of the Loan/Grant Amount, but does not include adjudication services.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Agreement.

“Final Debt Service Schedule” means the schedule of Loan Payments due on this Agreement following the Final Requisition, as determined on the basis of the Loan Amount.

“Final Requisition” means the final requisition of moneys to be submitted by the Borrower/Grantee, which shall be submitted by the Borrower/Grantee on or before the expiration of the Interim Period as provided in Section 4.4 of this Agreement.

“Fiscal Year” means the period commencing on July 1 of 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 Borrower/Grantee as its fiscal year.

“Force Majeure” means acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; an order of any kind of the Government of the United States or of the State or civil or military authority or any court of competent jurisdiction; or any other act or condition that was beyond the reasonable control of, without fault or negligence of, or not reasonably foreseeable by the party claiming the Force Majeure event; except for (i) general economic conditions; or (ii) an inability of a party claiming the Force Majeure event to pay any debts when due.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting

body acceptable to the Finance Authority establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the means the Board of County Commissioners of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and shall equal 90% of the amount disbursed during the Interim Period not to exceed \$103,500.

“Hardship Waiver” means a determination by the Finance Authority pursuant to Section 4.1(a)(ii) herein that the annual principal payment by the Borrower/Grantee should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Agreement and not solely to the particular section or paragraph of this Agreement in which such word is used.

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

“Interim Debt Service Schedule” means the anticipated schedule of Loan Payments due on this Agreement following the Final Requisition, assuming disbursement of the entire Loan Amount within twenty-four (24) months of the Closing Date. The Interim Debt Service Schedule is attached hereto as Exhibit “C”.

“Interim Period” means the period no greater than twenty-four (24) months, unless a longer period is approved by the Finance Authority as provided in Section 4.4 of this Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Borrower/Grantee to pay costs of the Project.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee as during the Interim Period for the purpose of funding the Project and shall not equal more than \$11,500.

“Loan/Grant” or “Loan/Grant Amount” means the combined amount distributed to the Borrower/Grantee during the Interim Period partially as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and shall not equal more than \$115,000.

“Loan Payments” means, collectively, the Principal Component and interest, if any, to be paid by the Borrower/Grantee as payment of this Agreement as shown on Exhibit “C” hereto.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in

the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is \$11,500.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Parity Obligations” means this 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 parity with this Agreement, as shown on the Term Sheet.

“Pledged Revenues” means fifty percent (50%) of the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax enacted pursuant to Section 7-20E-9, NMSA 1978, as amended, and the Tax Ordinance, distributed to the Borrower/Grantee and pledged to the payment of the Loan Payments pursuant to the Resolution and this Agreement and described in the Term Sheet.

“Policies” means the Colonias Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

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

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

“Project Account” means the book account, if any, established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, which shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the Finance Authority for financial assistance that is primarily intended to develop Colonias infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means the Borrower/Grantee Resolution No. 21-73 adopted by the Governing Body on November 10, 2021 authorizing the acceptance of the Loan/Grant, approving this Agreement and pledging the Pledged Revenues to the payment of the Loan Payments as shown on the Term Sheet.

“State” means the State of New Mexico.

“Tax Ordinance” means Ordinance No. 21, as amended, passed and approved by the Borrower/Grantee pursuant to Section 7-20E-9, NMSA 1978, as amended, which imposes a one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax on the gross receipts of persons engaging in business within the Borrower/Grantee, effective January 1, 1993, originally imposed what was known as the third increment of County Local Option Gross Receipts Tax. Pursuant to Laws 2019, Chapter 274, § 16, the County Local Option Gross Receipt Tax imposed by Ordinance No. 21 is no longer identifiable as the third increment, and instead comprises one-eighth of one percent (.125%) of the maximum rate of county gross receipts tax that may be imposed under Section 7-20E-9, NMSA 1978, as amended, of one and three-quarters percent (1.75%), fifty percent (50%) of which is pledged to the Loan.

“Term Sheet” means Exhibit “A” attached to this Agreement.

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was planned, which is twenty (20) years.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE BORROWER/GRANTEE

Section 2.1 Representations, Covenants and Warranties of the Borrower/Grantee: The Borrower/Grantee represents, covenants and warrants for the benefit of the Finance Authority as follows:

(a) Binding Nature of Covenants; Enforceability. All representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee contained in this Agreement shall be deemed to be the representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee to the full extent authorized or permitted by law, and such representations, covenants, stipulations, obligations and agreements shall be binding upon the Borrower/Grantee and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such representations, covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

(b) Authorization of Agreement. The Borrower/Grantee is a Qualified Entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved its acceptance of the Loan/Grant and the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement, and this Agreement and the other documents related to the transaction to which the Borrower/Grantee is a party

constitute legal, valid and binding special obligations of the Borrower/Grantee enforceable against the Borrower/Grantee in accordance with their respective terms.

(c) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the Colonia and the constituent public they serve.

(d) Useful Life. The Agreement Term is not greater than the Useful Life of the Project, and in any event shall not exceed thirty (30) years.

(e) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the proceeds of the Loan/Grant Amount shall be distributed pro rata as the Loan Amount and Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Local Match and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety.

(f) Lien. The Loan Payments constitute an irrevocable lien on the distribution on the Pledged Revenues, the priority of which is consistent with that shown on the Term Sheet.

(g) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Payments as provided in this Agreement, except when a Hardship Waiver is obtained pursuant to Section 4.1(a)(ii) of this Agreement. The Loan Payments shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to make the Loan Payments from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee 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.

(h) No Breach or Default Caused by Agreement. Neither the execution and delivery of this Agreement and the other documents related to the transaction, nor the fulfillment of or compliance with the terms and Conditions in this Agreement and the other documents related to the transaction, 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 Borrower/Grantee is a party or by which the Borrower/Grantee is bound, or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower/Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(i) Irrevocable Enactments. While this Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for payment of this Agreement, including the Resolution, shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest that has been repaid, or provision made for payment thereof, shall not be

subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof. The Borrower/Grantee shall not impair the rights of the Finance Authority or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(j) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute or deliver this Agreement and the other documents related to the transaction or to comply with its obligations under this Agreement and the other documents related to the transaction.

(k) Agency Approval. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations under this Agreement and the other documents related to the transaction, 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.

(l) No Event of Default. No event has occurred and no condition exists which, with the giving of notice or the passage of time or upon the execution and delivery of this Agreement or the other documents related to the transaction, would constitute an Event of Default on the part of the Borrower/Grantee under this Agreement and the other documents related to the transaction.

(m) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or future Project-related expenses of the Borrower/Grantee.

(n) Borrower/Grantee's Existence. The Borrower/Grantee will maintain its legal identity and existence so long as this Agreement remains outstanding unless another Political Subdivision of the State, State agency, or other entity by operation of law succeeds to the liabilities, rights and duties of the Borrower/Grantee under this Agreement without adversely affecting to any substantial degree the privileges and rights of the CIB and Finance Authority.

(o) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The engineering design or engineering feasibility reports shall not involve or anticipate a sale, lease, mortgage, pledge, or the relocation or disposal of any part of the product or system designed during its Useful Life; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee and the other qualifying entities may, with the express written approval of the Finance Authority and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the term of the Agreement. Any such agreement shall provide that the CIB and Finance Authority, or either of them, shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity (as defined by the Act) other than the Borrower/Grantee, owning or

operating any portion of the Project during the term of the Agreement. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life.

(p) Expected Coverage Ratio. The Pledged Revenues are reasonably expected to equal or exceed—from the Fiscal Year in which the Closing Date occurs and, on an ongoing basis during each Fiscal Year of the Agreement Term—one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(q) Right to Inspect. The Finance Authority shall have the right to inspect at all reasonable times all records, accounts and data relating to the Project and to inspect the Project and all properties comprising the Project, and the Borrower/Grantee shall supply such records, accounts, and data as are requested by the Finance Authority, within thirty (30) days of receipt of such request, written or oral.

(r) Pledged Tax Revenues Covenants. The Governing Body has duly adopted the Tax Ordinance imposing the County Share Gross Receipts Tax, which constitutes the Pledged Revenues. The Tax Ordinance has not been repealed or superseded and is in full force and effect.

(s) Records and Reporting. The Borrower/Grantee shall maintain financial records in accordance with Generally Accepted Accounting Principles throughout the Agreement Term, and in the event that the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14 does not apply, conduct an audit of the Project's financial records if requested by the CIB or the Finance Authority and provide any and all other information and access to the Project as requested by the CIB or the Finance Authority.

(t) Acquisition and Completion. The Borrower/Grantee shall proceed expeditiously to complete the Project and shall commence the Project in a commercially reasonable timeframe following the Closing Date. Further, the Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire and complete the Project lawfully and efficiently in accord with all applicable laws, ordinances, resolutions and regulations relating to the planning and completion of the Project and use of the Loan/Grant proceeds. The Project complies with Section 7-20E-9, NMSA 1978. The plans and specifications for the Project shall fully incorporate the available technologies and operational design for water use efficiency described in the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(u) Use of Grant Proceeds for Construction; Other Qualified Entities. If any of the proceeds of the Loan/Grant are used for construction, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, installed, located, completed or extended on real property owned by a Qualified Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the

Project on such real property, obtain the written agreement of such other Qualified Entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, installed, located, completed or extended on such real property), which written agreement shall be subject to approval by the Finance Authority and shall include an express statement by such other Qualified Entity that the Finance Authority is a third party beneficiary of such written agreement.

(v) Local Match. The Local Match is legally available for the Project, has been applied or set aside by the Borrower/Grantee solely for the purposes of the Project and sufficient evidence of the Local Match has been provided and will be continued to be provided as part of the Borrower/Grantee's quarterly reporting as outlined in Section 7.1 and as otherwise requested by the Finance Authority.

(w) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended, and upon request, provide the Finance Authority with a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(x) Executive Order 2013-006 Requirements. The Borrower/Grantee has and will meet the requirements of Executive Order 2013-006 prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the CIB.

(y) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

(z) Additional Debt. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenues that is senior to or on parity with this Agreement, the Borrower/Grantee will seek the written consent of the Finance Authority, which consent will not be unreasonably withheld. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenue subordinate to this Agreement or a lien on any revenues of the Borrower/Grantee other than the Pledged Revenues, the Borrower/Grantee will notify the Finance Authority in writing of such indebtedness.

### ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate upon the earliest of the following events: (a) submission and acceptance of a completed Form of Certificate of Completion, Exhibit "D", and repayment of the Loan Amount and Interest or (b) the exercise by the Finance Authority to terminate the Agreement pursuant to an Event of Default as outlined in Section IX of this Agreement.

### ARTICLE IV LOAN/GRANT TO THE BORROWER/GRANTEE; INVESTMENT OF MONEYS

Section 4.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The Finance Authority hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Finance Authority, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit "C" of this Agreement. The Loan Amount shall be pre-payable by the Borrower/Grantee at the conclusion of the Interim Period without penalty.

(i) Subordinate Nature of Loan Amount Obligation. The obligation of the Borrower/Grantee to make the Loan Payments shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Borrower/Grantee to make the Loan Payments shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Finance Authority pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended.

(ii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, if a Borrower/Grantee has encountered an unforeseeable hardship, the Borrower/Grantee may apply in writing on or before April 1<sup>st</sup> to the Finance Authority for forgiveness of the annual Loan Payment coming due on June 1 of the same year. The Borrower/Grantee shall submit its application to the Finance Authority for a determination by the Finance Authority, in cooperation with DFA, and shall submit sufficient documentation of the existence of the unforeseeable hardship as is reasonably required by the Finance Authority, in cooperation with DFA, to make a determination. The Borrower/Grantee shall promptly respond to additional requests for information from the Finance Authority or DFA. Such application for a Hardship Waiver shall be executed by the Authorized Officers of the Borrower/Grantee. The Finance Authority shall communicate the decision to the Borrower/Grantee in writing. In the event of a determination of unforeseeable hardship, the Loan Payment otherwise due on June 1 of that year shall be forgiven. If no unforeseeable hardship is found to exist, the Loan Payment shall remain outstanding and due and payable in accordance with the terms of this Agreement.

(iii) Constitutional and Statutory Debt Limitations. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the CIB, the Finance Authority, the State or the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation.

(b) Grant to the Borrower/Grantee. The CIB has granted to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the Finance Authority and the CIB an amount equal to the Grant Amount subject to the terms of this Agreement.

(c) Project Account. The Finance Authority may establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the Finance Authority.

Section 4.2 Investment of Borrower/Grantee's Accounts. Money on deposit in the Borrower/Grantee's accounts created hereunder and held by the Finance Authority may be invested by the Finance Authority for the credit of the Fund.

Section 4.3 Loan/Grant Amount Does Not Exceed Total Cost. The sum of the Grant Amount, the Loan Amount, and the Local Match (and as set forth on the Term Sheet) does not exceed the cost of the Project, which, along with other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project.

Section 4.4 Final Requisition. The Final Requisition shall be submitted by the Borrower/Grantee within the Interim Period. The Interim Period may be extended only as approved in writing by an Authorized Officer of the Finance Authority, based on the Borrower/Grantee's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority, that unanticipated circumstances resulted in delaying the acquisition and completion of the Project, and submission of the Borrower/Grantee's Final Requisition.

#### ARTICLE V LOAN/GRANT AMOUNT DISBURSEMENT CONDITIONS

Section 5.1 Conditions Precedent to Disbursement of Loan/Grant Amount. Prior to the payment of any requisition of the Loan/Grant Amount or any portion thereof by the Finance Authority from the Fund, the following conditions shall be satisfied:

(a) The Finance Authority shall have determined that the Borrower/Grantee has met the Conditions established for the Loan/Grant; and

(b) Prior to disbursement of any portion of the Loan/Grant Amount for planning and design, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to or easements, rights of way, or permits on the real property upon or through which the planning and design phase is to be conducted, or if acquisition and completion of the Project does not require physical or visual access to existing lands or facilities, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney certifying that no title to, easements, rights of way, or permits are necessary to acquire and complete the Project; and

(c) The Borrower/Grantee shall be in compliance with the provisions of this Agreement; and

(d) No Event of Default has occurred; and

(e) The Borrower/Grantee shall have provided any other information requested by the Finance Authority in its absolute discretion including documentation sufficient to make a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

Section 5.2 Accounting for Amounts Credited to the Project Account. So long as Section 5.1 has been complied with and all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of all plans and specifications), upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Borrower/Grantee, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the Borrower/Grantee that the amount of the disbursement request represents the progress of design, construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the Finance Authority shall seek funds sufficient to satisfy the request and, upon receipt of those funds disburse from the Fund, amounts which together are sufficient to pay the requisition in full or that portion approved by the Finance Authority in its sole discretion. The certification provided pursuant to this Section 5.2 in support of the requisition must be acceptable in form and substance to the Finance Authority. The Borrower/Grantee shall provide such records or access to the Project as the Finance Authority, and, at its request, the CIB, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's requisition requests made hereunder.

Section 5.3 Acknowledgment and Non-liability for Funding Interruption. The Borrower/Grantee hereby acknowledges that the Finance Authority and the CIB may be required to seek or request funds to satisfy the request outlined in Section 5.2 from an agency, instrumentality or other Political Subdivision of the State and that the Finance Authority and the CIB may have no control or authority over those entities. The Borrower/Grantee hereby agrees to waive on behalf of itself and indemnify and hold the Finance Authority and the CIB harmless from any and all third party claims, liability or damage that may or could be caused as a result of a delay or denial of funds related to or arising from the procedure described above or any other mechanism necessary or required to request, secure or process funds. \_

Section 5.4 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Fund, of the Loan/Grant Amount, or any portion thereof, without the approval of the Finance Authority to reimburse any expenditure made prior to the approval date of the award by the Finance Authority Board.

Section 5.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of the Project an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the Finance Authority, substantially in the form of Exhibit "E" attached hereto, stating that, to his or her knowledge, that the Project has been completed. No portion of the Loan/Grant Amount shall be disbursed after the expiration of the Interim Period.

Section 5.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Amount; Termination of Pledge. Upon the first to occur of either (a) completion of the disbursement of the Loan/Grant Amount as signified by delivery of the completion certificate contemplated in Section 5.5 hereof; or (b) the earlier expiration of the time allowed for disbursements of Loan/Grant funds as provided in Section 5.5 hereof, the Finance Authority shall transfer the amounts remaining on deposit in the Project Account, if any, to such other fund

permitted by law. Upon such entry, the pledge of the Project Account, if any, established in this Agreement shall terminate.

ARTICLE VI  
LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Loan to the Borrower/Grantee; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from the Finance Authority an amount not to exceed the Loan Amount. The Borrower/Grantee promises to pay, but solely from the sources pledged herein, the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Borrower/Grantee does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to pay the Loan Payments, and other amounts owed by the Borrower/Grantee as herein provided, subject to and subordinate to all other pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (except only that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the Finance Authority pursuant to the Act or the Water Project Finance Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) all other rights hereinafter granted, for the securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided, however, that if the Borrower/Grantee, its successors or assigns, shall pay, or cause to be paid, all Loan Payments at the time and in the manner contemplated by this Agreement, and shall pay all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment, this Agreement and the rights created thereby shall terminate; otherwise, this Agreement shall remain in full force and effect.

The schedule of Loan Payments, assuming the disbursement of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Agreement as Exhibit "C". Within thirty (30) days after the Final Requisition is made, the Finance Authority shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Borrower/Grantee pursuant to this Agreement. Such Final Debt Service Schedule shall supersede the schedule attached hereto as Exhibit "C".

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Borrower/Grantee and the Finance Authority acknowledge and agree that the obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided, and that the Agreement shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee or the State within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall

be construed to pledge or to create a lien on any class or source of Borrower/Grantee moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Borrower/Grantee hereunder, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Colonias Infrastructure Project Fund. All Loan Payments made by the Borrower/Grantee to the Finance Authority to repay the Loan Amount and interest thereon, if any, shall be deposited into the Colonias Infrastructure Project Fund.

Section 6.3 Manner of Payment. The Loan Amount shall be payable by the Borrower/Grantee to the Finance Authority in annual installments of principal payable on June 1 after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 10.1 of this Agreement. The obligation of the Borrower/Grantee 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. Notwithstanding any dispute between the Borrower/Grantee and the Finance Authority, any vendor or any other person, the Borrower/Grantee 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 Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee 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 make the Loan Payments and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

Section 6.5 Finance Authority's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided in this Agreement and upon written request from the Borrower/Grantee, the Finance Authority agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Finance Authority no longer holds or maintains any lien or claim against the Pledged Revenues.

## ARTICLE VII ADMINISTRATION

Section 7.1 Borrower/Grantee Reporting to the Finance Authority. The Borrower/Grantee shall provide the Finance Authority with a quarterly written report substantially in the form of Exhibit "D" attached hereto, or other report format as designated by the Finance Authority, and signed by an Authorized Officer of the Borrower/Grantee. The first

quarterly report shall be due on March 31, 2022, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, and (c) a description of the percentage of completion of the Project.

Section 7.2 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Upon the completion of the Project as signified by delivery of the completion certificate required by Section 5.5 hereof, the Finance Authority shall determine, by reference to the Project Account, if any, whether any portion of the authorized Loan/Grant Amount remains unexpended. If any of the Loan/Grant Amount remains unexpended, the funds shall be transferred by the Finance Authority to the appropriate account or fund in accordance with applicable law and the Borrower/Grantee shall have no right to access the funds.

Section 7.3 Further Assurances and Corrective Instruments. The Finance Authority and the Borrower/Grantee 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 and carrying out the intention hereof.

Section 7.4 Representatives of the Finance Authority or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Finance Authority or the Borrower/Grantee is required, or the Borrower/Grantee, or the Finance Authority is required to take some action at the request of any of them, such approval or such request shall be given for the Finance Authority or for the Borrower/Grantee, by an Authorized Officer of the Finance Authority or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.5 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13128 through 131199, as amended, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

Section 7.6 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin;

(b) Any contractor or subcontractor providing construction services in connection with the Project shall post a performance and payment bond in accordance with the requirements of NMSA 1978, § 13-4-18, as amended; and

(c) Any contractor or subcontractor providing construction services in connection with the Project shall comply with the prevailing wage laws in accordance with the requirements of NMSA 1978, § 13-4-11, as amended.

Section 7.7 Little Miller Act. To the extent NMSA 1978, § 13-4-1 et seq., (the “Little Miller Act”) is applicable to the Project, the Borrower/Grantee shall comply with the requirements of the “Little Miller Act”. If bonding requirements of the Little Miller Act are not applicable to the Project, the Borrower/Grantee will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Borrower/Grantee. Any sum or sums derived from said performance bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

#### ARTICLE VIII INSURANCE; NON-LIABILITY OF THE FINANCE AUTHORITY

Section 8.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State’s risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended, shall and hereby agrees to name the Finance Authority as additional insureds with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a Qualifying Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other Qualifying Entity to perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other Qualifying Entity that the Finance Authority is a third party beneficiary of such written agreement.

#### Section 8.2 Non-Liability of the Finance Authority and the CIB.

(a) The Finance Authority and the CIB shall not be liable in any manner for the Project, Borrower/Grantee’s use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Borrower/Grantee or any other owner or operator of the Project.

(b) The Finance Authority and the CIB shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

(c) To the extent permitted by law, the Borrower/Grantee shall and hereby agrees to indemnify and save the Finance Authority and the CIB 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 Agreement Term, from: (i) any act of negligence or other misconduct of the Borrower/Grantee, or breach of any covenant or warranty by the Borrower/Grantee 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/Grant Agreement proceeds and interest on the investment thereof. The Borrower/Grantee shall indemnify and save the Finance Authority and the CIB 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 CIB, shall defend the Finance Authority or the CIB, as applicable, in any such action or proceeding.

#### ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default Defined. Any one of the following shall be an “Event of Default” under this Agreement:

(a) Failure by the Borrower/Grantee to pay any amount required to be paid under this Agreement on the date on which it is due and payable; or

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the Finance Authority, unless the Finance Authority 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 but cannot be cured within the applicable thirty (30) day period, the Finance Authority will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of Force Majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 9.1(b) during the continuance of such inability (but Force Majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Borrower/Grantee contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is determined to be false or misleading in any material respect in the sole discretion of the Finance Authority; or

(d) A petition is filed against the Borrower/Grantee 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 shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests; or

(e) The Borrower/Grantee 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 Borrower/Grantee admits insolvency or bankruptcy or its inability to pay its debt as they become due or is generally not paying its debt as such debt 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 Borrower/Grantee 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 shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests; or

(g) Default by the Borrower/Grantee in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Borrower/Grantee to the Finance Authority.

Section 9.2 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee shall be paid only from available Pledged Revenues unless the Borrower/Grantee in its sole discretion pays the judgment from other available funds.

Section 9.3 Remedies on Default. Whenever any Event of Default has occurred and is continuing, and subject to Section 9.4 hereof, the Finance Authority may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Borrower/Grantee in this Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Borrower/Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;

(b) Terminate this Agreement;

(c) Cease disbursing any further amounts from the Project Account;

(d) Demand that the Borrower/Grantee immediately repay the Loan/Grant Amount or any portion thereof if such funds were not utilized in accordance with this Agreement;

(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority;

(f) Intervene in judicial proceedings that affect this Agreement or the Pledged Revenues;

(g) Cause the Borrower/Grantee to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(h) 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 Agreement or to enforce any other of their rights hereunder.

The Borrower/Grantee shall be responsible for reimbursing the Finance Authority for any and all fees and costs incurred in enforcing the terms of this Agreement.

Section 9.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or 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 Borrower/Grantee or the Finance Authority to exercise any remedy reserved in this Article IX, it shall not be necessary to give any notice, other than such notice as may be required in this Article IX.

Section 9.5 Waivers of Events of Default. The Finance Authority may, in its discretion, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Finance Authority in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority 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 shall be restored to its former position and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 9.6 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 9.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Borrower/Grantee shall default under any of the provisions hereof, and the Finance Authority 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 Borrower/Grantee herein contained, the Borrower/Grantee agrees that it shall, on demand therefor, pay to the Finance Authority the fees of such attorneys and such other expenses so incurred, to the extent such attorneys' fees and expenses may be determined to be reasonable by

a court of competent jurisdiction; provided, however, that the obligation of the Borrower/Grantee under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE X  
MISCELLANEOUS

Section 10.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

Luna County  
Attn.: County Manager  
700 South Silver Avenue  
Deming, New Mexico 88030

If to the Finance Authority, to:

New Mexico Finance Authority  
Attn.: Chief Executive Officer  
207 Shelby Street  
Santa Fe, New Mexico 87501

The Borrower/Grantee or the Finance Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices; certificates or other communications shall be sent.

Section 10.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Finance Authority and the Borrower/Grantee and their respective successors and assigns, if any.

Section 10.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the Finance Authority and the Borrower/Grantee on the Effective Date constitute the entire agreement of the parties regarding the Loan/Grant and the funding of the Project through the Loan/Grant as of the Effective Date, and the terms of this Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Agreement.

Section 10.4 Amendments. This Agreement may be amended only with the written consent of all of the parties to this Agreement. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by an Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Agreement.

Section 10.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority or the CIB, or against any officer, employee, director or member of the Borrower/Grantee, 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 or member of the Borrower/Grantee, the CIB or of the Finance Authority is hereby expressly waived and released by the Borrower/Grantee, the CIB and the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 10.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments, 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 10.7 Execution in Counterparts. This 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 10.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. Pursuant to NMSA 1978, § 6-21-26, as amended, the venue for any proceedings or any other action or procedure against the Finance Authority shall be in Santa Fe County.

Section 10.9 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 Agreement.

Section 10.10 Application of Act and Board Rules. The Finance Authority and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and the Board Rules are incorporated into this Agreement by reference.

Section 10.11 CONSENT TO JURISDICTION. THE BORROWER/GRANTEE IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO SECTION 6-21-26, NMSA.

*[Remainder of page intentionally left blank.]*

[*Signature pages follow.*]

IN WITNESS WHEREOF, the Finance Authority, has executed this Agreement, which was approved by the CIB on May 20, 2021 and by the Finance Authority's Board of Directors on June 24, 2021, in its corporate name by its duly Authorized Officer; and the Borrower/Grantee has caused this Agreement to be executed and attested by duly Authorized Officers thereof. All of the above are effective as of the date first above written.

FINANCE AUTHORITY:

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

Prepared for Execution by Officers of the  
New Mexico Finance Authority:

SUTIN, THAYER & BROWNE  
A PROFESSIONAL CORPORATION

By \_\_\_\_\_  
Suzanne Wood Bruckner

Approved for Execution by Officers of the  
New Mexico Finance Authority:

By \_\_\_\_\_  
Daniel C. Opperman,  
Finance Authority Chief Legal Officer

BORROWER/GRANTEE:

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

ATTEST:

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

6081974

EXHIBIT "A"

TERM SHEET

\$115,000 COLONIAS INFRASTRUCTURE PROJECT LOAN/GRANT TO LUNA COUNTY,  
NEW MEXICO, CIF-5538

Project Description: The Project is infrastructure development in accordance with the Act consisting of improvements to roadway infrastructure, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies and is more specifically described as design of Rockhound roadway re-construction improvements for La Paz, Tigua, Paquime, Casas Grandes and Manzano Streets and shall include such other related work and revisions necessary to complete the Project.

Grant Amount: \$103,500

Loan Amount: \$11,500

Interest Component: 0%

Pledged Revenues: Fifty percent (50%) of the third one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax enacted pursuant to Section 7-20E-9, NMSA 1978, as amended, and the Tax Ordinance, distributed to the Borrower/Grantee and pledged to the payment of the Loan Amount pursuant to the Resolution and this Agreement

Authorizing Legislation: Borrower/Grantee Resolution No. 21-73, adopted November 10, 2021

Outstanding Parity Debt: NMFA CIF-4919, Maturing 2041

Local Match: \$11,500

Closing Date: December 17, 2021

Project Account Deposit: \$115,000

Conditions to be satisfied prior to first disbursement of the Loan/Grant Amount:

Delivery to Finance Authority of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other

Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the County Clerk of the Borrower/Grantee, (ii) a copy of the minutes or record of the Meeting, approved and signed by the Chair and attested to by the County Clerk of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant:

All Conditions defined in the Agreement.

EXHIBIT "B"

FORM OF REQUISITION  
(Colonias Infrastructure Project Fund)

RE: \$115,000 Loan/Grant Agreement by and between the New Mexico Finance Authority and Luna County, New Mexico, as Borrower/Grantee (the "Agreement").

Loan/Grant No. CIF-5538

Closing Date: December 17, 2021

TO: NEW MEXICO FINANCE AUTHORITY, [colonias@nmfa.net](mailto:colonias@nmfa.net)

You are hereby authorized to disburse from the Project Account – Luna County, New Mexico with regard to the above-referenced Agreement, the following:

I. PAYMENT INFORMATION

REQUISITION NO. \_\_\_\_\_ PAYMENT AMOUNT: \$ \_\_\_\_\_

PAYEE'S NAME: \_\_\_\_\_

PAYEE'S ADDRESS: \_\_\_\_\_

II. REQUISITION INFORMATION (complete for all payments)

- *Attach proof of expenditures (cancelled check, wire transfer receipt, bank ledger, etc.).*
- *List all Vendors, Payment Purposes, or Eligible Item Categories below or attach separate page or spreadsheet if needed.*

Vendor Name \_\_\_\_\_

Total Amount \$ \_\_\_\_\_ Invoice No.(s) \_\_\_\_\_

Purpose of Payment \_\_\_\_\_

Eligible Item Category \_\_\_\_\_

Vendor Name \_\_\_\_\_

Total Amount \$ \_\_\_\_\_ Invoice No.(s) \_\_\_\_\_

Purpose of Payment \_\_\_\_\_

Eligible Item Category \_\_\_\_\_

Vendor Name \_\_\_\_\_

Total Amount \$ \_\_\_\_\_ Invoice No.(s) \_\_\_\_\_

Purpose of Payment \_\_\_\_\_

Eligible Item Category \_\_\_\_\_

III. WIRING INFORMATION:

BANK NAME:	
ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: \$ \_\_\_\_\_  
*Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.*

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: \$ \_\_\_\_\_

TOTAL REQUIRED MATCH: \$11,500

V. VERIFICATION AND AUTHORIZATION

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the Finance Authority pursuant to the Colonias Infrastructure Act to the Borrower/Grantee within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Project Account – Luna County, New Mexico. All representations contained in the Agreement, the related closing documents remain true and correct, and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant are to be used to pay the costs of Eligible Items, as defined in the Agreement. Eligible Items include (1) planning, designing, construction, improving or expanding a qualified project; (2) developing engineering feasibility reports for Qualified Projects; (3) inspecting construction of Qualified Projects; (4) providing professional services; (5) completing environmental assessments or archeological clearances and other surveys for Qualified Projects; (6) acquiring land, water rights, easements or rights of way; (7) eligible legal costs and eligible fiscal agent fees associated with development of Qualified Projects, within limits set by the Colonias Infrastructure Board (“CIB”).

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved by all entities required by the CIB and the New Mexico Finance Authority in their sole discretion to approve such plans and specifications, has or will be acquired in compliance with applicable procurement laws and regulations and has or will be inspected and approved in accordance with applicable laws and regulations.

Capitalized terms used herein, are used as defined or used in the Loan/Grant Agreement.

DATE: \_\_\_\_\_

\_\_\_\_\_  
 AUTHORIZED OFFICER  
 (As Provided in the Loan/Grant Agreement)  
 Print Name: \_\_\_\_\_  
 Print Title: \_\_\_\_\_

EXHIBIT "C"

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount shall be payable by the Borrower/Grantee to the Finance Authority in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2024 and ending June 1, 2043. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty.

[ATTACH INTERIM DEBT SERVICE SCHEDULE]



EXHIBIT "E"

FORM OF CERTIFICATE OF COMPLETION

RE: \$115,000 Agreement by and between the Finance Authority and the Luna County, New Mexico, as Borrower/Grantee (the "Agreement")

Loan/Grant No. CIF-5538

Closing Date: December 17, 2021

TO: NEW MEXICO FINANCE AUTHORITY, [colonias@nmfa.net](mailto:colonias@nmfa.net)

I, \_\_\_\_\_, the \_\_\_\_\_ of the  
[Name] [Title or position]

Borrower/Grantee, hereby certify as follows:

1. The project described in the Agreement (the "Project"), or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on \_\_\_\_\_, 20\_\_.

2. The total cost of the Project was \$ \_\_\_\_\_.

3. Cost of the Project paid from the Loan/Grant Amount was \$ \_\_\_\_\_.

4. The portion of the Loan/Grant Amount unexpended for the Project is \$ \_\_\_\_\_.

5. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

LUNA COUNTY, NEW MEXICO

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

Its: \_\_\_\_\_

EXHIBIT "F"

DOCUMENTS

1. Open Meetings Act Resolution No. 21-20 adopted by the Borrower/Grantee on February 11, 2021;
2. Resolution No. 21-73 adopted on November 10, 2021, Agenda, and Affidavit of Publication of Notice of Adoption of Resolution in the *Deming Headlight*;
3. Loan/Grant Agreement;
4. General and No Litigation Certificate of the Borrower/Grantee;
5. Delivery, Deposit and Cross-Receipt Certificate;
6. Right of Way Certificate (to be executed prior to construction funding);
7. Borrower's Counsel Opinion;
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan/Grant Counsel to the Finance Authority;
9. Finance Authority Application and Project Approval (informational only).

\$115,000  
LUNA COUNTY, NEW MEXICO  
COLONIAS INFRASTRUCTURE LOAN/GRANT  
NO. CIF-5538

Closing Date: December 17, 2021

TRANSCRIPT OF PROCEEDINGS  
INDEX

1. Open Meeting Act Resolution No. 21-01 adopted January 14, 2021
2. Resolution No. 21-73, adopted November 10, 2021, Agenda, and the Affidavit of Publication of the Notice of Adoption of Resolution in the *Deming Headlight*
3. Loan/Grant Agreement
4. General and No Litigation Certificate
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate
7. Borrower's Counsel Opinion
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan/Grant Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)

TRANSCRIPT DISTRIBUTION LIST

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

\$115,000  
LUNA COUNTY, NEW MEXICO  
COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT  
No. CIF-5538

STATE OF NEW MEXICO	)	<u>GENERAL AND</u>
	) ss.	<u>NO LITIGATION</u>
COUNTY OF LUNA	)	<u>CERTIFICATE</u>

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Chair, County Clerk and Budget and Procurement Director (Finance) for Luna County, New Mexico (the "Borrower/Grantee") in the State of New Mexico (the "State"):

Capitalized terms used in this Certificate have the same meaning as defined in Resolution No. 21-73 adopted by the Governing Body of the Borrower/Grantee on November 10, 2021 (the "Resolution") unless otherwise defined in this Certificate or the context requires otherwise.

1. The Borrower/Grantee is a duly organized and existing county under the laws of the State of New Mexico.

2. There exists within the boundaries of the Borrower/Grantee, Rockhound, a community that has been designated by the Borrower/Grantee as a Colonia within the meaning of the Colonias Infrastructure Act, and the Borrower/Grantee will be receiving the Loan/Grant for the benefit of Rockhound and its residents.

3. From at least June 24, 2021 to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers of the Borrower/Grantee:

Chair:	Barbara Reedy
Commissioners:	Linda Smrkovsky John Sweetser
County Manager:	Chris Brice
Budget & Procurement Director:	Joanne C. Hethcox
County Clerk:	Berenda McWright
Treasurer:	Kristie Hobbs
County Attorney:	Charles C. Kretok, Esq.

4. Based on data collected during the 2020 Census, the population of Luna County is at least 75% English speaking.

5. Notice of adoption of the Resolution was published in English in the *Deming Headlight*, a newspaper qualified to publish legal notices that is of general circulation in Luna County, New Mexico.

6. There is no reason within our knowledge and belief after due investigation, why the Borrower/Grantee may not enter into the Loan/Grant Agreement with the New Mexico Finance Authority, as authorized by the Resolution.

7. 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 Borrower/Grantee since the date of the Resolution.

8. To the best of our knowledge and belief after due investigation, none of the events of default referred to in Article IX of the Loan/Grant Agreement has occurred.

9. There is no threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to our knowledge is there any basis therefor, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of the Pledged Revenues to pay the principal, interest or administrative fees on the Loan/Grant Agreement, or in any way materially adversely affecting or questioning (a) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain expenses as described therein, (b) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee taken with respect to the Resolution or the Loan/Grant Agreement, (c) the execution and delivery of the Loan/Grant Agreement, or (d) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.

10. The Borrower/Grantee 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 Borrower/Grantee contained in the Loan/Grant Agreement and in the Resolution are true and correct as of the date hereof.

11. The Borrower/Grantee 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.

12. To our knowledge and belief after due investigation, neither the Chair, the County Clerk, any member of the Governing Body of the Borrower/Grantee, nor any other officer, employee or other agent of the Borrower/Grantee 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.

13. Regular meetings of the Borrower/Grantee's Governing Body and the meeting at which the Resolution was adopted have been conducted via Zoom conference call.

14. The Borrower/Grantee's Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Borrower/Grantee's Governing Body in connection with the Loan/Grant Agreement. The Open Meetings Act Resolution adopted and approved by the Governing Body on January 14, 2021 establishes notice standards for meetings of the Governing Body. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Resolution and the Loan/Grant Agreement was taken at meetings held in compliance with the Open Meetings Act Resolution No. 21-01 which resolution was effective on November 10, 2021 and has not been amended, repealed or rescinded.

15. The Borrower/Grantee is in compliance with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended.

16. Ordinance No. 21, as amended, effective January 1, 1995, 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.

17. The Chair and the County Clerk, on the date of the signing of the Loan/Grant Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Borrower/Grantee authorized to execute the Loan/Grant Agreement.

18. This Certificate is for the benefit of the Finance Authority and the Colonias Infrastructure Board.

19. This Certificate may be executed in counterparts.

*[Signature page follows.]*

WITNESS our signatures and the seal of the Borrower/Grantee this 17th day of December, 2021.

(SEAL)

LUNA COUNTY, NEW MEXICO

By \_\_\_\_\_  
Barbara Reedy, Chair  
Board of County Commissioners

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

6081977



STATE OF NEW MEXICO        )  
  ) ss  
COUNTY OF SANTA FE        )

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/Grant Agreement for Project No. CIF-5538.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

6082043

\$115,000  
LUNA COUNTY, NEW MEXICO  
COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT  
NO. CIF-5538

RIGHT-OF-WAY CERTIFICATE

The undersigned on behalf of Luna County, New Mexico (the "Borrower/Grantee"), a county in the State of New Mexico, hereby certifies except as noted in item 3 below:

1. That the Borrower/Grantee or Rockhound is the owner in fee simple of the lands needed for the design of the facilities to be designed with the proceeds of the above-referenced Loan/Grant made by the New Mexico Finance Authority (the "Project"), or that the Borrower/Grantee or Rockhound has acquired and presently holds continuous and adequate rights-of-way on lands owned by others that are needed for the Project, whether public or private, and such omissions, defects, or restrictions as may exist will in no substantial way or manner endanger the value or the operation of the Project, or that the Borrower/Grantee does not require titles, easements, rights of way, or permits to complete the Project.
2. That the attached map shows the location of all lands and rights-of-way needed for the Project, which lands and rights-of-way the Borrower/Grantee or Rockhound has acquired and now holds by purchase or dedication, by right of use or adverse possession, or by legal conveyances such as right-of-way or easement deeds, permits, or other instruments.
3. Exceptions: [NONE] \_\_\_\_\_  
\_\_\_\_\_

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate on behalf of Luna County, New Mexico as of this 17<sup>th</sup> day of December, 2021.

---

Charles D. Kretek, Esq.  
Attorney for Borrower/Grantee,  
700 South Silver Avenue  
Deming, NM 88030

6081988

[COUNSEL LETTERHEAD]

FINAL OPINION OF COUNSEL

To: New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501

Re: Luna County, New Mexico  
\$ 115,000 Loan/Grant No. CIF-5538

Ladies and Gentlemen:

I am the county attorney for Luna County, New Mexico (the "Borrower/Grantee") and provide this opinion in connection with the above-referenced Loan/Grant. I am licensed to practice law and in good standing in the State of New Mexico. I provide this opinion in my role as counsel to the Borrower/Grantee, understanding that the New Mexico Finance Authority ("Lender/Grantor") and the New Mexico Colonias Infrastructure Board ("CIB") are relying on this opinion letter and but for this opinion letter, the Loan/Grant would not be approved.

Capitalized terms used in this Opinion have the same meaning as defined in Resolution No. 21-73 adopted by the Governing Body of the Borrower/Grantee on November 10, 2021 (the "Resolution") unless otherwise defined in this Opinion or the context requires otherwise.

I hereby certify that I have examined:

- (1) The Luna County, New Mexico Colonias Infrastructure Project Fund Application dated February 11, 2021 and the New Mexico Colonias Infrastructure Board Approval dated May 20, 2021 and the New Mexico Finance Authority Approval dated June 24, 2021 for Loan/Grant No. CIF-5538 (the "Application" and the "Approval," respectively), relating to the Project.
- (2) The statutes creating the Borrower/Grantee.
- (3) The Annual Open Meetings Act Resolution or resolutions of the Borrower/Grantee in effect on November 10, 2021 and on December 17, 2021.
- (4) The proceedings of the Governing Body (including all agendas, minutes, resolutions, ordinances and publications) which authorize the Loan/Grant application, the Project development, the budget for the Project, and the

contracts with the various Project professionals including but not limited to architects, engineers, planners and contractors.

- (5) Proceedings of the Borrower/Grantee from the date of the Application to the date of this Opinion, including, without limiting the generality of the foregoing, the action of the Borrower/Grantee relating to (a) the selection of its Chair, Board of County Commissioners and County Clerk; (b) the adoption of the Borrower/Grantee's Annual Open Meetings Act Resolution or resolutions; (c) the adoption of ordinances or resolutions governing the operation of the Project; (d) cost estimates for the Project; (e) the adoption of ordinances, resolutions and regulations for the furnishing of service to customers; (f) the proposed operating budget for services to be provided, in whole or in part, by means of the Project; (g) the proposal to finance the Project, in whole or in part, with a Loan/Grant made by the CIB, acting through the Finance Authority; (h) the Resolution authorizing the Chair to execute necessary documents to obtain the Loan/Grant for the Project; (i) all necessary approvals for the Project from federal, State or local authorities; and (j) the execution and delivery of the Loan/Grant Agreement evidencing such Loan/Grant.
- (6) The Resolution and the Loan/Grant Agreement providing that the Lender/Grantor on behalf of the Borrower/Grantee shall maintain a book Project Account on behalf of the Borrower/Grantee and shall cause the disbursement of the Loan/Grant Amount as provided in Article IV of the Loan/Grant Agreement.
- (7) The records and files of all offices in which there might be recorded, filed, or indexed, any liens of any nature whatsoever, affecting the title to any real property to be acquired with the Loan/Grant proceeds, or on which will be located any Project property to be acquired with the Loan/Grant proceeds.
- (8) Ordinance No. 21, originally recorded by the Borrower/Grantee on September 14, 1992, and its amendment effective January 1, 1995, and imposing a one-eighth of one percent (0.125%) increment of County Local Option Gross Receipts Tax, fifty percent (50%) of the receipts of which are pledged to secure the Loan/Grant.

Based upon my examination of the foregoing, it is my opinion that:

- A. The Borrower/Grantee is a duly organized and existing county under the laws of the State of New Mexico.
- B. There exists within the boundaries of the Borrower/Grantee, Rockhound, a community that has been designated by the Borrower/Grantee as a Colonia within the meaning of the Colonias Infrastructure Act and the Borrower/Grantee will be receiving the Loan/Grant for the benefit of Rockhound and its residents.

- C. The ordinances, resolutions, rules and regulations governing the operation of the Project have been duly adopted and are now in full force and effect.
- D. The Authorized Officers of the Borrower/Grantee were duly and validly elected or appointed and are empowered to act for the Borrower/Grantee.
- E. The Borrower/Grantee has corporate power:
  - (1) to design and complete the Project;
  - (2) to execute and deliver Loan/Grant documents including those identified above;
  - (3) to perform all acts required by such Loan/Grant documents to be done by it; and
  - (4) to own, operate and maintain the Project during its Useful Life.
- F. All proceedings of the Borrower/Grantee, its elected and appointed officers, and employees, required or necessary to be taken in connection with the authorization of the actions specified above have been duly taken and all such authorizations are presently in full force and effect.
- G. 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 Borrower/Grantee to carry out and enforce the provisions of the Loan/Grant Agreement.
- H. The Resolution is a valid and binding special limited obligation of the Borrower/Grantee enforceable in accordance with its terms and creates the pledge of the County Local Option Gross Receipts Tax of the Borrower/Grantee, as described in the Loan/Grant Agreement (the "Pledged Revenues") which it purports to create.
- I. The Loan/Grant Agreement is a valid and binding special, limited obligation of the Borrower/Grantee, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.
- J. No event will result from the execution and delivery of the Loan/Grant Agreement that constitutes a default or an event of default under either the Loan/Grant Agreement or the Resolution, and no event of default and no default under the Loan/Grant Agreement or the Resolution has occurred and is continuing on the date of this Opinion.

- K. The Borrower/Grantee 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/Grant Agreement to have been authorized, approved, performed or consummated by the Borrower/Grantee at or prior to the date of this Opinion. The Borrower/Grantee has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution and the Loan/Grant Agreement.
- L. 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/Grant Agreement or any of the actions required to be taken by the Resolution or the Loan/Grant Agreement to the date of this Opinion have been obtained and are in full force and effect.
- M. Neither the Borrower/Grantee's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Loan/Grant Agreement does or will conflict with, or constitutes a breach by the Borrower/Grantee of, or default by the Borrower/Grantee under any law, court decree or order, governmental regulation, rule or order, ordinance, resolution, agreement, indenture, mortgage or other instrument to which the Borrower/Grantee is subject or by which it is bound.
- N. There is no actual or threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to my knowledge, is there any basis therefore, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Borrower/Grantee, (b) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain costs of the Finance Authority and the CIB associated with the administration of the Colonias Infrastructure Project Fund, (c) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee with respect to the Resolution or the Loan/Grant Agreement, (d) the execution and delivery of the Loan/Grant Agreement, (e) the authority of the Borrower/Grantee to repay the Loan Amount, or (f) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.
- O. There are no recorded liens of any nature whatsoever affecting the title to any real property upon which the Project to be designed with the proceeds of the Loan/Grant will be located.
- P. No legal proceedings have been instituted or are pending, and to my knowledge none are threatened, whether or not the Borrower/Grantee is named as a party in such proceedings, which would affect the Borrower/Grantee's interest in the real property upon which the Project to be designed with the proceeds of the

Loan/Grant will be located, and there are no judgments against the Borrower/Grantee or liens against any property of the Borrower/Grantee that would impair the Borrower/Grantee's ability to complete the Project.

- Q. The Borrower/Grantee and other qualified entities have acquired all of the necessary land rights, easements and rights-of-way for the Project and the Borrower/Grantee now has sufficient, adequate and continuous rights-of-way, including rights-of-way granted to the Borrower/Grantee from such qualified entity, to permit the design, construction, installation, operation and maintenance of the Project.
- R. The Borrower/Grantee has complied with all of the requirements of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, applicable to the Project on or prior to the date of this opinion letter.
- S. Ordinance No. 21, as amended effective January 1, 1995 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.

Dated this 17<sup>th</sup> day of December, 2021.

---

Charles C. Kretek, Esq.  
County Attorney for Borrower/Grantee,  
Luna County, New Mexico

6082048

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)  
MICHAEL G. SUTIN (1935-2019)  
JAY D. HERTZ (1934-2020)

ROBERT G. HEYMAN (Of Counsel)

NOE ASTORGA-CORRAL  
ANNE P. BROWNE

SUZANNE WOOD BRUCKNER  
MARIA MONTOYA CHAVEZ  
AMANDA E. CVINAR  
JOHN A. DRAGOVITS  
EDUARDO A. DUFFY  
ALEXANDER G. ELBORN  
TINA MUSCARELLA GOOCH  
JUSTIN L. GREENE  
JESSE D. HALE  
MINGJIE L. HOEMMEN  
WADE L. JACKSON  
DAVID H. JOHNSON  
ROBERT J. JOHNSTON  
ISAAC A. LEON

CHRISTINA M. LOONEY  
STEVEN DOUGLAS LOONEY  
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WWW.SUTINFIRM.COM

December 17, 2021

New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501

Re: \$115,000 Colonias Infrastructure Project Fund Loan/Grant to Luna County, New Mexico, CIF-5538

Ladies and Gentlemen:

We have acted as Loan/Grant Counsel to the New Mexico Finance Authority in connection with the \$115,000 Colonias Infrastructure Project Fund Loan/Grant Agreement dated December 17, 2021 (the "Loan/Grant Agreement") by and between Luna County, New Mexico (the "Borrower/Grantee") and the New Mexico Finance Authority (the "Lender/Grantor"). The Loan/Grant Agreement is executed and delivered by the Borrower/Grantee pursuant to Sections 6-30-1 through 6-30-8, NMSA 1978, as amended, and the Borrower/Grantee's Resolution No. 21-73, adopted on November 10, 2021 (the "Resolution"). The Loan/Grant Agreement has been executed and delivered to provide funds for the design of a Rockhound roadway re-construction project for La Paz, Tigua, Paquime, Casas Grandes, and Manzano Streets, as described in the Loan/Grant Agreement.

We have examined the Resolution and such other law and certified proceedings and other documents as we deem necessary to deliver this opinion. As to questions of fact material to the opinions set forth herein, we have relied upon representations of the Borrower/Grantee 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 Borrower/Grantee'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 judicial discretion in accordance with general principles of equity and the assumptions, qualifications and limitations contained in this opinion:

1. The Resolution is a valid and binding special limited obligation of the Borrower/Grantee enforceable in accordance with its terms and creates the pledge of the County

Page 2

Local Option Gross Receipts Tax of the Borrower/Grantee, as described in the Loan/Grant Agreement (the “Pledged Revenues”) which it purports to create.

2. The Loan/Grant Agreement is a valid and binding special, limited obligation of the Borrower/Grantee, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.

3. The Loan/Grant Agreement is payable solely from, and such payment is secured by a valid and binding subordinate lien on the distribution on the Pledged Revenues subordinate to the lien thereon of other outstanding obligations secured by the Pledged Revenues and on a parity with the lien thereon of other outstanding obligations secured by a subordinate lien on the Pledged Revenues. The Lender/Grantor has no right to have taxes levied by the Borrower/Grantee for the payment of principal of or interest on the Loan/Grant Agreement and the Loan/Grant Agreement does not represent or constitute a debt or a pledge of, or a charge against, the general credit of the Governmental Unit.

4. The Loan/Grant Agreement is a valid and binding obligation of the Lender/Grantor and is enforceable in accordance with its terms and provisions.

We express no opinion with respect to the provisions of the Loan/Grant Agreement and the Resolution with respect to indemnification provisions requiring that amendments be in writing or payment of attorneys’ fees. 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. 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 Lender/Grantor and the Borrower/Grantee with the terms of the Loan/Grant Agreement.

The foregoing opinion 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,

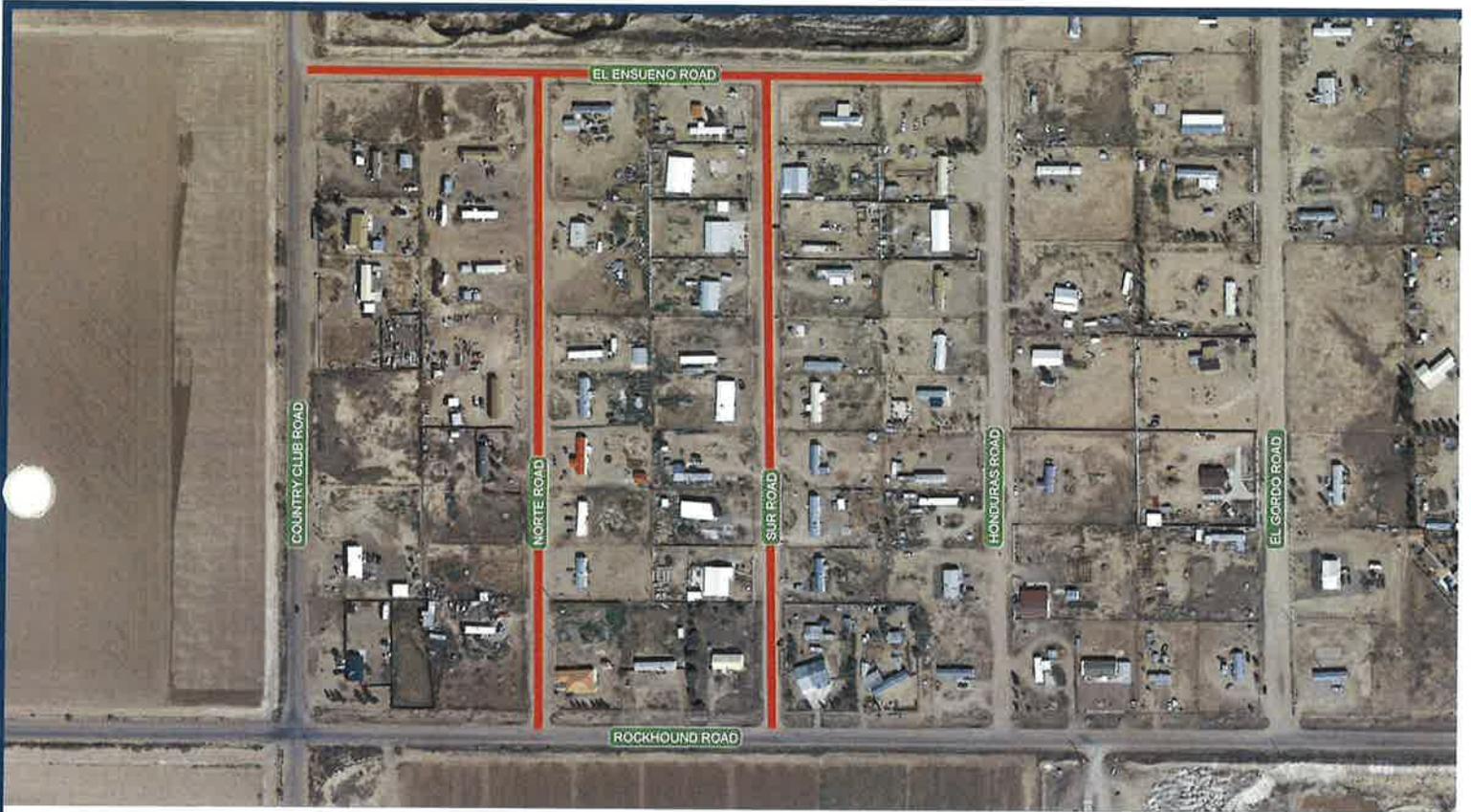
SUTIN, THAYER & BROWNE  
A Professional Corporation

**DETAILED BOND DEBT SERVICE**

**Luna County  
CIF-5538 Design Roadway Reconstruction Improvements**

**Loan Component (LOAN)**

<i>Period Ending</i>	<i>Principal</i>	<i>Interest</i>	<i>Debt Service</i>
06/01/2024	575		575
06/01/2025	575		575
06/01/2026	575		575
06/01/2027	575		575
06/01/2028	575		575
06/01/2029	575		575
06/01/2030	575		575
06/01/2031	575		575
06/01/2032	575		575
06/01/2033	575		575
06/01/2034	575		575
06/01/2035	575		575
06/01/2036	575		575
06/01/2037	575		575
06/01/2038	575		575
06/01/2039	575		575
06/01/2040	575		575
06/01/2041	575		575
06/01/2042	575		575
06/01/2043	575		575
	11,500	0	11,500



2019 COLONIAS INFRASTRUCTURE - LUNA COUNTY



NUT 781 001 1

**WILSON  
& COMPANY**  
414 N MAIN ST  
SUITE A  
LAS CRUCES, NEW MEXICO  
88001  
PH (505) 348-4000  
FAX (505) 348-4872  
www.wilsonco.com

*Be it remembered that at the Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 10<sup>th</sup> day of November 2021, the following proceedings were had and entered of record.*

## **RESOLUTION 21-74**

### **PROCUREMENT POLICY AMENDMENT**

**WHEREAS**, the Board of County Commissioners of Luna County enacted the Luna County Procurement Policy on June 8, 2017, to establish appropriate purchasing procedures;

**WHEREAS**, the Board of County Commissioners of Luna County enacted the Luna County Procurement Policy Amendment on April 9, 2020, to amend Sections 2.7A and 2.7B of the purchasing procedures;

**WHEREAS**, the Board of County Commissioners of Luna County insists on maintaining the integrity of all Luna County purchases and expenditures but recognizes that the Luna County Procurement Policy needs to be amended, within the confines of the New Mexico Procurement Code, Section 13-1-28 through 13-1-199, NMSA 1978 and the New Mexico Mileage and Per Diem Act, Section 10-8-1 through 10-8-8, NMSA 1978, and

**WHEREAS**, the Luna County Procurement Policy, as amended herein, will continue to apply to all travel, purchasing and procurement activities of all Luna County Elected Officials, Department Directors and employees.

**NOW, THEREFORE, BE IT RESOLVED** that the following subsections shall be substituted as follows, with all other provisions of the Policy remaining in full force and effect:

#### **SECTION VII: REIMBURSEMENT OF PUBLIC OFFICIALS AND EMPLOYEES FOR TRAVEL EXPENSES AND ATTENDING MEETINGS**

A county employee or officer may elect to use a Luna County issued Purchase card (P-Card) for actual expenses incurred while traveling on official business. Actual itemized receipts must accompany the monthly expense report. The following limits apply while using your P-Card for travel:

Lodging: Standard GSA government rate as determined by destination of travel. County Manager must approve any amounts higher than the standard GSA rate for lodging prior to travel.

Limit for meals:

\$55 maximum for every 24-hour period traveling in state (meals only)

\$55 maximum for every 24-hour period traveling out of state (meals only)

Tips: Employees may tip for meals up to a maximum of \$6.00 for every 24-hour period. This amount is above the provided limit for meals.

Limit for return from overnight travel (partial day):

Up to \$18 for 2.00 to 5.99 hours beyond the last 24-hour period (meals only)

Up to \$40 for 6.00 to 11.99 hours beyond the last 24-hour period (meals only)

A county employee or officer may elect to receive per diem without regard to whether expenses are actually incurred.

**Overnight Travel Per Diem Rates:**

\$151 within the state but away from home (meals and lodging)

\$194 in Santa Fe (meals and lodging)

\$151 outside the state on official business, or,

not to exceed \$215 when \$151 is inadequate to that geographical area out of State, *or actual* (only when more affordable lodging is unavailable or impractical, and only with prior approval of LCBCC/County Manager) (meals and lodging)

**Non-Overnight Travel Per Diem Rates for number of hours worked above 8 in a 9-hour period:**

Up to \$18 for 2.00 to 5.99 hours beyond the normal work day (meals only)

Up to \$40 for 6.00 to 11.99 hours beyond the normal work day (meals only)

Up to \$55 for 12.00 hours or more beyond the normal work day (meals only)

Up to \$55 for 12.00 hours or more beyond the normal work day, out of state (meals only)

A county employee or officer may elect to receive reimbursement of actual expenses in lieu of per diem rates. Actual itemized receipts must accompany the reimbursement request. Employee must obtain County Manager or designee approval for any lodging above the Standard GSA government rate (prior to travel date). If the employee chooses to receive actual reimbursement instead of receiving per diem, the following limits apply.

Lodging: Standard GSA government rate as determined by destination of travel. County Manager must approve any amounts higher than the standard GSA rate for lodging prior to travel.

**Limit for meals:**

\$55 maximum for every 24-hour period traveling in state (meals only)

\$55 maximum for every 24-hour period traveling out of state (meals only)

**Limit for return from overnight travel:**

Up to \$18 for 2.00 to 5.99 hours beyond the last 24-hour period (meals only)

Up to \$40 for 6.00 to 11.99 hours beyond the last 24-hour period (meals only)

**Limit for meals for non-overnight travel (for the number of hours worked above 8, in a 9-hour period):**

Up to \$18 for 2.00 to 5.99 hours beyond the normal work day (meals only)

Up to \$40 for 6.00 to 11.99 hours beyond the normal work day (meals only)

**Actual reimbursement for mileage:**

80% of The Internal Revenue Service ("IRS") standard mileage rate set January 1<sup>st</sup> of the previous year for each mile traveled in a privately-owned vehicle, and only with prior approval of LCBCC/County Manager.

**Miscellaneous Other Expenses:** Reasonable expenses for ordinary and necessary business costs with approval of the Department head.

Travel advances are authorized by the Board in hardship cases approved by the County Manager, for no more than 80% of the anticipated per diem costs, for trips lasting more than 3 days (72 hours) but less than 7 days. Any refunds or overages shall be repaid within 5 working days of return. Travel advances may also be authorized for approved out of state travel. Requests for travel advances shall be made in writing at least 2 weeks in advance of the proposed travel.

**Done at Deming, New Mexico this 10<sup>th</sup> day of November, 2021.**

**Luna County Board of County Commissioners**

**ATTEST:**

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

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**Berenda L. McWright, County Clerk**

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

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

## State of New Mexico Per Diem Rates

*As Published by DFA on May 1, 2021*

Per Diem Rate for Overnight Travel	FY21	FY22
In-State	85.00	151.00
In-State - County of Santa Fe (Special Area)	135.00	194.00
Out-of-State	115.00	151.00
<i>With the exception of Santa Fe County, per diem rates are set at the standard GSA rate.</i>		
Meal Rates for Actual Reimbursements	FY21	FY22
In-State	30.00	55.00
Out-of-State	45.00	55.00
<i>Note: Meals are only reimbursable when using approved actual rates (per 24-hour period)</i>		
Partial Day/Return from Travel/Same Day	FY21	FY22
less than 2 hours	-	-
2 hours but less than 6	12.00	18.00
6 hours but less than 12	20.00	40.00
12 hours but less than 24	30.00	55.00
<i>The Travel &amp; Per Diem Act allows for actual reimbursement when per diem rates are insufficient.</i>		

**Resolution Supporting the New Mexico Counties  
2022 Legislative Priorities**

**WHEREAS**, in October 2021, the New Mexico Counties Board of Directors approved three legislative priorities for consideration by the New Mexico Legislature at its 2022 session; *and*

**WHEREAS**, NMC has requested that the Board of County Commissioners in each of the state's 33 counties discuss and approve support for NMC's legislative priorities as an important step in assuring maximum understanding of NMC's legislative priorities at the county level; *and*

**WHEREAS**, county support enables NMC to demonstrate strong local and statewide support to the state legislature for the following issues:

**1. HB 2 Appropriations**

Detention Reimbursement Fund

Restore the County Detention Facilities Reimbursement Act to the original appropriation of \$5 million. Currently the NM Legislature appropriates \$2.3 million even though the NM Sentencing Commission estimates the state owes counties over \$8 million a year for holding state prisoners.

Prisoner Transport and Extradition

Create a line item in the DFA budget with \$750,000 to reimburse counties that provide transportation for state prisoners. Statute requires the state to make such payment, however no money has been appropriated to counties for many years. Counties should not have to pay for state prisoner extradition.

RISE Funding

Make permanent and increase county participation in the RISE (Reach, Intervene, Support and Engage) Program. RISE is a partnership between the NM Behavioral Health Services Division and several county jails to reduce recidivism and help non-violent offenders get treatment to stay out of jail. As we start to see more concrete results, we hope to be able to add more counties and jails into that partnership.

**2. Law Enforcement Protection Fund**

The state imposes taxes on insurance policies every year to pay for things like improved fire services and protecting law enforcement officers, yet every year millions of dollars have been taken from those funds to help pay for other areas in state government. We recently fixed the fire fund, now we need to keep the state from taking money from the LEPF. The \$5-\$6 million dollars that goes back into the GF should be going to local law enforcement agencies to enhance the efficiency and effectiveness of law enforcement services.

**3. Courthouse Funding**

Create a matching fund to help counties pay for construction and renovation of state district courthouses with an initial capital outlay request of \$50-\$100 million. This is another unfunded county mandate that we would like to alleviate in the future.

**NOW, THEREFORE, BE IT RESOLVED** that the Luna County Board of County Commissioners does hereby support NMC's legislative priorities as set forth above and urges that legislation incorporating these priorities be enacted by the state legislature during its 2022 session.

**ADOPTED** this 10<sup>TH</sup> of November 2021.

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

\_\_\_\_\_  
Barbara L. Reedy, Chair; District 1 For / Against

\_\_\_\_\_  
Linda M. Smrkovsky, District 2 For / Against

\_\_\_\_\_  
John S. Sweetser, District 3 For / Against

ATTEST:

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



## CERTIFICATION OF CANVASS RESULTS

We, the undersigned Board of County Commissioners acting as the Board of Canvassers of Luna County, State of New Mexico, canvass the Local Election held in said county, November 2, 2021, certify that the canvass results text file sent to the office of secretary of state is a correct canvass of returns of said election.

WITNESS the Honorable Board of County Commissioners, \_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Member

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

SEAL

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

**Luna County****Countywide****Candidate Summary of Local Election Held on November 2, 2021  
State of New Mexico****Trustee - COLUMBUS CITY COUNCIL C1**

ROCIO A SIERRA ()	59
RICARDO GUTIERREZ ()	19
ROBERTO R GUTIERREZ ()	22
NICOLE SUSANNE LAWSON ()	54

**City Councilor District 2 - DEMING CITY COUNCIL DISTRICT 2**

IRMAISELA A RODRIGUEZ ()	62
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**City Councilor District 3 - DEMING CITY COUNCIL DISTRICT 3**

JOE F MILO ()	109
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**Municipal Judge - MUNICIPAL DISTRICT 113**

EDGAR B DAVALOS ()	391
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**School Board Member Position 1 - DEMING PUBLIC SCHOOLS BOARD 1**

DANIEL A KROWL ()	191
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**School Board Member Position 2 - DEMING PUBLIC SCHOOLS BOARD 2**

MARY LOU CAMERON ()	192
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**School Board Member Position 4 - DEMING PUBLIC SCHOOLS BOARD 4**

OLIVIA PAEZ ()	136
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**School Board Member Position 5 - DEMING PUBLIC SCHOOLS BOARD 5**

ROBERT M OROSCO ()	137
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**Soil & Water Supervisor 3 - DEMING SOIL & WATER CONSERVATION BOARD**

JOEL M NANEZ ()	669
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**Soil & Water Supervisor 3 - GRANT SOIL & WATER CONSERVATION BOARD**

DAVID L MCCAULEY ()	5
NANCY LEE STEPHENS ()	0

**Caballo Soil & Water Supervisor At Large - CABALLO SOIL AND WATER**

LINDA S ALVAREZ ()	0
KEITH S FRANZOY ()	0
CASEY E MC GUIRE ()	0

**Soil & Water Supervisor 4 - DEMING SOIL & WATER CONSERVATION BOARD**

JAMES LYNN WOOD ()	657
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**Soil & Water Supervisor 4 - GRANT SOIL & WATER CONSERVATION BOARD**

ARMANDO D AGUILERA ()	4
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Yes

576

No

294

**Luna County****Countywide**Ballots Cast Summary of Local Election Held on November 2, 2021  
State of New Mexico

Precinct	Absentee	Early	Election Day	Hand	Provisionals	Total Ballots Cast
PRECINCT 001	0	14	7	0	0	21
PRECINCT 002	0	11	22	0	0	33
PRECINCT 003	0	44	66	0	0	110
PRECINCT 004	0	4	85	0	0	89
PRECINCT 005	2	16	33	0	0	51
PRECINCT 006	1	13	71	0	0	85
PRECINCT 007	3	16	28	0	0	47
PRECINCT 008	0	12	31	0	0	43
PRECINCT 009	0	34	37	0	0	71
PRECINCT 010	2	10	41	0	0	53
PRECINCT 011	2	15	27	0	0	44
PRECINCT 012	2	21	40	0	0	63
PRECINCT 013	3	17	27	0	0	47
PRECINCT 014	3	26	34	0	0	63
PRECINCT 015	0	0	6	0	0	6
PRECINCT 016	0	12	39	0	0	51
PRECINCT 017	1	7	25	0	0	33
	19	272	619	0	0	910