

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS

Barbara L. Reedy
Member

Linda M. Smrkovsky
Chairperson

John S. Sweetser
Member

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

1. **Call to Order:** Chair Smrkovsky to commence meeting (At this time, please silence your cell phones and any other electronic devices) Pledge of Allegiance, State Pledge.
2. **Roll Call:**
3. **Approval of Agenda:**
4. **Minutes:**
 - a. Work Session, Thursday, December 13, 2018
MOTION AND VOTE
 - b. Regular Meeting, Thursday, December 13, 2018
MOTION AND VOTE
5. **Elected Officials Report:**
6. **Interim County Manager's Report:**
7. **Indigent Claims Report:**
 - a. Recess as County Commission, Convene as Claims Board
MOTION AND VOTE
 - b. Presentation of Claims Report by Joanne Hethcox \$0.00
 - c. Consider Claims dated January 10, 2019
MOTION AND VOTE
 - d. Recess as Claims Board, Re-Convene as County Commission
MOTION AND VOTE
8. **Public Comment:** The Public has the opportunity to provide comment at this time pertaining to items on the agenda only. Please be advised that this is not a question and answer period. Your comments specific to the agenda items will be limited to three minutes unless the Board of County Commissioners requests more information. The time limit and opportunity to speak is given in an effort to allow public input on business matters of the County to move the agenda forward in a prompt yet efficient manner.

Comment will not be allowed on individual agenda items as they are discussed by the Commissioners during new business.

9. Consent Agenda:

- a. Accounts Payable: \$830,964.91
- b. Payroll: \$1,072,725.00
- c. Resolution 19-01 Notice of Meetings
- d. Resolution 19-02 Timely Payments
- e. Resolution 19-03 Notice of Fees
- f. Resolution 19-04 Depositories, Board of Finance, and Media Designation
- g. Resolution 19-05 Inspection of Public Records
- h. Resolution 19-06 CDBG Annual Certifications and Commitments
- i. Resolution 19-07 Budget Increases
- j. Resolution 19-08 Budget Transfers
- k. Resolution 19-09 Designating Treasurer to Require Collateralization

MOTION AND ROLL CALL VOTE

10. Old Business:

- a. Resolution 18-60 Authorizing and Approving Application for Financial Assistance and Project Approval to NM Finance Authority for Colonias Infrastructure Fund

MOTION AND ROLL CALL VOTE

11. New Business:

- a. Seconded Amended Joint Powers Agreement creating the NM CAP Entity

MOTION AND VOTE

12. Executive Session:

Executive Session to discuss Limited Personnel Matters pursuant to §10-15-1 (H)(2) NMSA 1978 pertaining to applicants of County Manager's Contract

MOTION AND ROLL CALL VOTE

13. Upcoming Meetings (unless otherwise specified):

Work Session- February 14, 2019 at 9:00 a.m.

Regular Meeting- February 14, 2019 at 10:00 a.m.

14. Adjourn:

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

**MINUTES
WORK SESSION
LUNA COUNTY BOARD OF COUNTY COMMISSIONERS
Thursday, December 13, 2018**

BE IT REMEMBERED that the Luna County Board of County Commissioners met at 9:00 a.m. on Thursday, December 13, 2018 in the County Commission Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting a Work Session.

CALL TO ORDER: Chair Smrkovsky called the meeting to order at 9:06 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 Commissioners constituting a quorum were present:

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

SERVICE AWARDS: Captain Mike Brown presented a five year service pin to Corporal Marty Crumley.

PRESENTATIONS/ANNOUNCEMENTS:

- **Safety Committee Recognition:** Risk Manager Mark Jasso and Luna County Safety Review Committee Chair Frankie Tarazon presented Challenge Coins for Dispatcher Cody Garcia and Dispatcher Monica Marquez. The Dispatchers were reviewing the cameras while on duty and witnessed a person trying to break into a county vehicle. They reacted quickly, called the police and the individual breaking in was arrested. Leslie Nabours from the Clerk's Office was also presented a Challenge Coin for her immediate response which prevented a person from falling and possibly getting hurt while voting in the Clerk's Office. The Safety Committee reviews accidents, injuries, losses and damages and they make recommendations on who earns recognition with Challenge Coins.

DISCUSSION:

- **Animal Control Ordinance Update:** Charles Kretek reported on repealing the current ordinances regarding animal control 1, 33, and 52 and replacing them with a new comprehensive ordinance. Mr. Kretek stated that he has gathered lots of source material from various counties and cities. Also, Allen Edmonds at the Animal Protection of New Mexico has provided a great deal of material and just recently the Humane Society of the United States sent information as well. Mr. Kretek is currently compiling all the information and putting it into groups by subjects in order to compile our ordinance. Mr. Kretek commented that he intended to present the ordinance at this meeting, but would rather get it right than get it quick, so he now intends to present the ordinance at the next meeting in January. Chair Smrkovsky mentioned that if the ordinance isn't ready for the January meeting, a special meeting could be scheduled as soon as the ordinance is ready.

PUBLIC INPUT: Michelle Whitehurst commented that Luna County was on Channel 4 news reporting that a dog was killed on Ruff Ruff's property and that what is happening is unacceptable. She stated that the County is responsible to the public to oversee that the contractors are fulfilling their duties which they are paid to perform with our tax dollars. She reported that Luna County Humane Society 2015 tax documents revealed that they are awarded \$202,083 in grants and \$98,609 in contributions. Ms. Whitehurst mentioned that the City gives \$95,000 and the County gives \$105,000 per year. The shelter receives approximately 49% of their funding from our government. She stated that many people in the room are aware that Ruff Ruff is not the only case of hoarding, abuse or puppy mills in Luna County. She suggested that the ordinance must be very concise in its language and enforced fairly and consistently across the board so that Luna County is not a magnate for these problems. She stated that two volunteer groups have stepped up to take care of these animals. Ms. Whitehurst requested that all involved in helping the County out in this situation will not find themselves in some witch hunt litigation and stated that it would be great if some funding could be provided to the two entities that are helping to get these animals homes and transferred to foster care. The two rescue groups are taking on the financial responsibilities themselves.

Ann Booker commented that she was recently inducted on the Board of the Animal Shelter and would like to work with all entities in Luna County and the City of Deming to make things better. Ms. Booker would like to see us move as quickly as possible, not to wait another month from January to February on a comprehensive ordinance. She stated there is the issue of enforcement which will always be a challenge but if you don't have the ordinances on the books you can't begin to enforce them. Ms. Booker informed the Commission that she came from a larger City where the public shelter worked very closely and without animosity with many private rescues. She stated that public organizations can't survive without the private organizations involved.

John Whitehurst commented that he has been in Luna County for over nine years now and effective government runs on accountability. Mr. Whitehurst said that he sat in the proceeding held several months ago and listened to this court talk about the options to resolve the abuses and neglect at Ruff Ruff Sanctuary. He stated that it appears no pro-active measures were taken or effectively put into place. He stated the primary responsibility for the abuse and neglect of these poor animals is first and foremost with Mr. Ray Schmal, but this court lacks leadership and action and bears a responsibility and a shame. He called for this court to enact its powers for the termination of Mr. Matt Robinson and Ms. Sandy Foster for the total ineffective actions leading to this inhumane situation. He finds the lack of action and accountability to be appalling and suggested this court consider a complete investigation into the local Humane Society and hold those persons accountable for the lack of action.

Randy Pirie, the affected property owner, presented pictures of the condition of his property to the Commissioners. He commented on how disappointed he is in Deming. He hasn't entered his home in over five years and only did so now to take pictures for this court. Mr. Pirie stated that he currently lives in Connecticut, but he can afford to live anywhere and he chose to retire in Deming which is why he bought this home. He stated that his house is currently unlivable. He said the Humane Society indicated that they are unable to help him with the living dogs, but were able to help him bury the dead one. There are currently 80 dogs living in his house without adequate provisions. Mr. Schmal has been evicted and sleeps in his truck on the road in front of his house. Mr. Schmal was recently given permission by a Luna County resident to move to another location and is currently moving dogs to that property. Mr. Pirie asked how this could be possible for him to start all over again at another

location. Mr. Pirie is asking the County not to wait until January to create the ordinance. He stated that it is impossible for one man to take care of 80 dogs.

Mike Reitz, Deming Animal Guardians Board Member, stated that what was shown on the news last night was so unbelievable and beyond immoral reproach. He stated that his volunteer was left alone to carry a dog with the Animal Control Officer just standing there and not helping. The Deming Animal Guardians have been feeding, watering and medicating the animals without any support from the Luna County Humane Society. He stated that an agreement was made last night with the Luna County Humane Society that DAG will feed, water and medicate in the morning and Luna County Humane Society would do the same in the evening. Mr. Reitz said no one from the Humane Society showed up last night to feed, water and medicate. Mr. Reitz stated that he had asked for Sandy to step down 17 years ago with no avail. He further commented that PETA and other groups will be coming into Luna County because of this situation. The Luna County Humane Society gets paid very well to take care of animals in the County and the contract with Luna County Humane Society needs to be reviewed and rewritten. The Ruff Ruff operation was inspected year after year by Luna County Humane Society and was allowed to become what it is. The Luna County Humane Society needs changes from the top down, the contract must be changed and the ones in power removed. The funding for training is available by DAG for two animal control officers. Mr. Reitz suggested that a salary would be required for animal control officers so that the officers will stay in operation. The City and the County need to be on the same page as far as the Humane Society is concerned. It should also be required that only property owners be able to have sanctuaries with limits to the amount of animals and mandatory shots for the animals.

Jonathan Pirie, brother to the affected property owner, expressed his concern that this could happen to his own rental properties in Luna County. He stated that on occasion, he would drive by his brother's property and found that his brother's property looked like a junk yard. The Realty Company in town that originally rented out his brother's property sent the contract back to his brother after one year and told his brother they refused to deal with the renter. He stated they have tried to legally evict Mr. Schmal to no avail and the house could probably be condemned as it is. He also gave praise to the Sheriff and DAG for being very helpful in this situation.

Chair Smrkovsky commented that she allowed more time than usual because she understands their concerns and the attorney is working on the best ordinance that fits this County and everyone concerned.

COMMISSIONERS AND STAFF DISCUSSION ON REGULAR MEETING AGENDA ITEMS: The Luna County Board of County Commissioners presented the Regular Meeting Agenda items for presentation and discussion by attending members of the public. *(*Note: Items were presented for discussion only and no actions were taken.)* The following agenda items were discussed:

Chair Smrkovsky commented time has run out to discuss items on regular meeting.

ADJOURN: Upon motion made by Commissioner Reedy and a second made by Chair Smrkovsky, Chair Smrkovsky adjourned the meeting at 10:01 a.m.

ATTEST:

**LUNA COUNTY BOARD OF
COUNTY COMMISSIONERS**

Andrea Rodriguez, Luna County Clerk

Barbara L. Reedy, District 1

Approved: _____

Chair, Linda M. Smrkovsky, District 2

John S. Sweetser, District 3

**MINUTES
REGULAR MEETING
LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS
Thursday, December 13, 2018**

BE IT REMEMBERED that the Luna County Board of County Commissioners met in regular session at 10:00 a.m. on Thursday, December 13, 2018 in the County Commission Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting any and all business to come properly before the Board.

The following staff and elected officials were present: Interim County Manager Glory Juarez, Attorney Charles C. Kretek, Clerk Andrea Rodriguez, Deputy Clerk Pilar Salcido, Chief Appraiser Michelle Holguin, Treasurer Gloria Rodriguez, Chief Deputy Treasurer Dora Madrid, Sheriff Kelly Gannaway, Captain Michael Brown, Sergeant Luis Malina, Community Projects Administrator Joe Padilla, Risk Director Mark Jasso, Supervisor Frankie Tarazon, Budget & Procurement Director/Indigent Claims Administrator Joanne Hethcox and Road Department Director Marty Miller.

CALL TO ORDER: Chair Smrkovsky called the meeting to order at 10:20 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, District 1
Linda M. Smrkovsky, Chair, District 2
John S. Sweetser, District 3**

APPROVAL OF AGENDA: Interim County Manager Glory Juarez recommended that Item B. Amended Humane Society Agreement be removed from agenda until further review of financials and the current situation. Ms. Juarez also requested to remove Item C. Partnership with Sherman Community Foundation of Activity and Park Guide. She announced that although the County will be participating in the activity with the park guide, the County plans to take funding from other programs instead of having the Commissioners allotting any additional funds to that program. Commissioner Reedy motioned to approve the amended agenda removing items B and C under New Business. Commissioner Sweetser seconded the motion which carried unanimously.

MINUTES:

- **Work Session- November 9, 2018:** Upon a motion made by Commissioner Sweetser and a second by Commissioner Reedy the Minutes of the November 9, 2018 Work Session were unanimously approved.
- **Regular Meeting- November 9, 2018:** Upon motion made by Commissioner Reedy and a second by Commissioner Sweetser the Minutes of the November 9, 2018 Regular Meeting were unanimously approved.

ELECTED OFFICIALS REPORTS: Sheriff Gannaway reported the statistics for the month of November. He stated that assaults and larcenies are down, burglaries and vehicle thefts are up. The overall totals for the month of November are up a little. Non-Criminal and accidents are down, DWI's are up and overall calls are down. He also reported that they are almost finished with the hiring process for two new deputies and the promotion of Sergeant Detective. A new Court Security Officer Britney Epski was hired and started last week. Sherriff Gannaway also mentioned he attended the BIPO training which was a great experience.

Chief Appraiser Michelle Holguin reported that the Assessor Delilah Rojo was expecting to attend this meeting but unfortunately was not able to be there. Ms. Holguin reported that the Assessors Department is running smoothly. They are getting ready to close their books for the year and working on notice of values which will be mailed out in March. They are also working on the livestock and personal property and getting ready for the rendering period the first of the year. The Appraisers are out in the field conducting the 2019 re-appraisals.

Clerk Andrea Rodriguez reported that the office is running smoothly and has settled down now that elections are over. The Clerk's Office is now preparing for a School Bond Election that will take place in February. Chair Smrkovsky asked if Bond elections can be combined. Clerk Andrea Rodriguez explained that the School believes they have to have this election because they may lose funding, but the School, the City and all other elections are all supposed to be conducted in November of the odd numbered years.

Treasurer Gloria Rodriguez reported that they survived the tax season deadline of December 10th. She thanked her staff, and her part time employees as they all worked very hard. The Treasurer's Department has been busy since tax rates were approved by the Commissioners in October. Ms. Rodriguez stated that she is looking forward to working with Michelle the new Assessor. The Financial Report is done and balanced as of December 5th. The online payment process and phone payments are being used more often than before. By the end of this month they expect to have 57 or 58% taxes collected. She thanked all those who have paid their taxes as it helps our community. Ms. Rodriguez invites anyone to visit her office if they have any questions.

Chair Smrkovsky mentioned that the three Commissioners, Michelle and Sherriff Gannaway went to the BIPO training. She felt that the training had improved and that it was very informative with a lot of interaction.

Commissioner Reedy mentioned that she thought the roll playing was very different and made an impact on the learning.

Treasurer Gloria Rodriguez mentioned that she would like to see security at the front door again. Commissioner Sweetser asked if they had an issue with no security. Ms. Rodriguez said they did have an issue with one tax payer where she almost called the Sherriff. Ms. Rodriguez will contact Laharca again to get the process started for glass in the Treasurer's office as they do have the glass installment project already budgeted.

COUNTY MANAGER'S REPORT: Interim County Manager Glory Juarez requested that the Commissioners send her the BIPO pictures so that she could add it to the Newsletter with the department statistics.

- The new pay plan for dispatchers will take effect next pay-period in an effort to recruit and retain quality dispatchers. The Dispatch Department is currently down four dispatchers.
- The County bought a parcel of land, between County owned properties, behind Starmax for future expansion.
- An Employee Meeting is scheduled tomorrow for the Courthouse and Administration Office employees, the offices will be closed at noon. The Meeting begins at 1:00 pm to be held at the Learning Center. The public has been notified of the office closure through facebook, newspaper and radio.
- Tentative date and time for the Oath of Office Ceremony of the newly elected officials is scheduled for December 19th at 9:00am. They are waiting on confirmation from District Judge Delaney.
- Emergency Management, County staff and other agencies are meeting pertaining to the warming centers. Preparations are done annually for winter road closures. They are not anticipating any closures at this time.

INDIGENT CLAIMS REPORT: Upon motion by Commissioner Reedy and a second by Commissioner Sweetser, the meeting of the Board of County Commissioners was unanimously recessed and the meeting of the Indigent Hospital Claims Board convened. Budget and Procurement Director Joanne Hethcox reported that there were no claims for the month of November. The total gross receipts for the month of November was \$67,712.43. The Indigent Claims Fund holds a total of \$839,423.07 of that \$360,592.80 is encumbered. Commissioner Sweetser motioned to approve the Indigent Claims Report. Commissioner Reedy seconded the motion which carried unanimously. Commissioner Reedy motioned to recess as a Claims Board and reconvene as a County Commission. Commissioner Sweetser seconded the motion which carried unanimously.

PUBLIC COMMENT: Deming Luna County Main Street President Christine Ann Harvey thanked the County for the help provided. She mentioned the maintenance men outdid themselves and the success of the event was largely dependent upon the County's help.

The notice of approval of the capital outlay has been received, which the City will match, so the total being received will be \$45,000. Preparation for the Zia project will start soon.

Edward Khanbabian spoke regarding the need for the County Manager applicants to meet the requirements, qualifications and experience for the position.

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

- a. Accounts Payable: \$830,964.91
- b. Payroll: \$1,045,701.28
- c. Resolution 18-48 Budget Increases
- d. Resolution 18-49 Budget Transfers

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

- a. **2019 Holiday Schedule:** Chair Smrkovsky announced that Good Friday had been added back to the schedule and no other changes were made. Commissioner Reedy motioned to approve the 2019 Holiday Schedule. Commissioner Sweetser seconded the motion, which carried unanimously.
- b. **Amended Humane Society Agreement:** This item was removed from the Agenda.
- c. **Partnership with Sherman Community Foundation on Activity and Park Guide:** This item was removed from the Agenda.
- d. **Resolution 18-50 – 2019 Colonias Infrastructure Fund Application:** Chair Smrkovsky announced they met with Wilson and Company this morning and recommended tabling the item. Commissioner Sweetser motioned to table Resolution 18-50 until next month. Commissioner Reedy seconded motion, which carried unanimously.
- e. **Disposal of Assets – Sheriff Department Vehicles:** Interim County Manager explained that previously the board approved the disposal of assets for the Sheriff's Department and this is new set of items recommended by the Sheriff for disposal. There is an Auction scheduled in January, which will be a joint auction with the City of Deming. Commissioner Sweetser motioned to approve the Disposal of Assets. Commissioner Reedy seconded motion, which carried unanimously following a roll call vote.
- f. **Elected Officials Salary Increase:** Chair Smrkovsky requested clarification regarding the salary schedule. Attorney Charles Kretek explained the salary increase only affects newly elected officials. Ms. Juarez explained that the cap recently increased this last year by statute. She recommended following the state statute which allows an additional \$1,000 for the newly elected Assessor due to her Appraiser 4 Certification. Commissioner Reedy motioned to amend newly elected Assessor's salary to be increased by \$1000 due to her certification. Commissioner Sweetser seconded motion, which carried unanimously following a roll call vote.
- g. **2nd Amended Resolution 18-05:** Ms. Juarez recommended approval of the resolution which designates the County Manager as the point of contact for public records requests. Commissioner Reedy motioned to approve the 2nd Amended Resolution 18-05 designating the County Manager as the Custodian of Public Records. Commissioner Sweetser seconded the motion, which carried unanimously following a roll call vote.
- h. **Road Maintenance Application – Discussion Only -** Road Department Director Marty Miller announced that two applications were received for County road maintenance. One of the applications was for Dove Meadow Estates, which will be reviewed with the Commissioners individually and the County Manager in January. The other application received was for Partridge Road which did not meet minimum

specifications for a County road. The road applications will be considered by the Board in February.

EXECUTIVE SESSION: to discuss Limited Personnel Matters pursuant to §10-15-1 (H) (7) for discussion subject to the attorney-client privilege related to pending litigation in which Luna County is a named defendant and to discuss limited personnel Matters pursuant to §10-15-1 (H) (2) NMSA 1978 pertaining to applicants of County Manager's Position. Commissioner Sweetser motioned to go into Executive Session to discuss Limited Personnel Matters pursuant to §10-15-1 (H) (7) and Limited Personnel Matters pursuant to §10-15-1 (H) (2) NMSA 1978 NMSA pertaining to applicants of County Manager's Position. The motion was seconded by Commissioner Reedy and carried unanimously following a roll call vote. The Commissioners went into Executive Session at 11:10am.

Chair Smrkovsky entertained a motion to return from Executive Session. Commissioner Reedy motioned to return from Executive Session where no other matters were discussed other than what was stated in the motion for the Executive Session. The motion was seconded by Commissioner Sweetser and carried unanimously following a roll call vote.

The Commissioners returned from Executive Session at 2:55pm.

No action was taken.

UPCOMING MEETINGS: Chair Smrkovsky announced the following upcoming meetings.

Staff Meeting-December 14, 2018 at 1:00p.m Event Center
Work Session- January 10, 2019 at 9:00a.m.
Regular Meeting- January 10, 2018 at 10:00 a.m.

ADJOURN: Upon a motion made by Commissioner Sweetser and a second made by Commissioner Reedy the meeting was adjourned at 2:57 p.m.

ATTEST:

**LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS**

ANDREA RODRIGUEZ, LUNA COUNTY CLERK

BARBARA L. REEDY, DISTRICT 1

APPROVED: _____

LINDA M. SMRKOVSKY, DISTRICT 2

JOHN S. SWEETSER, DISTRICT 3

Indigent Hospital Claims Office

Glory Juarez, Interim County Manager

IHC Board Meeting January 10, 2019

Month	Number	Amount	Number	Denied
January	7	\$1,844.07	0	\$0.00
Feburary	0	\$0.00		
March	8	\$2,404.52		
April	22	\$17,234.79		
May	3	\$4,534.91		
June	25	\$23,599.53	1	\$3,627.14
July	0	\$0.00		
August	4	\$15,625.68		
September	50	\$32,631.99		
October	9	\$37,941.44		
November	0	\$0.00		
December	0	\$0.00		
Total	128	\$135,816.93	1	\$3,627.14
This Month's Total	Mimbres Memorial Hospital			\$0.00
This Month's Total	Gila Regional Medical Center			\$0.00
This Month's Total	Memorial Medical Center			\$0.00
This Month's Total	Deming Fire Dept./EMS			\$0.00
This Month's Total	All Other Services			\$0.00
Total				\$0.00
Year to Date Total	Mimbres Memorial Hospital			\$118,508.41
Year to Date Total	All Other Hospitals			\$0.00
Year to Date Total	Deming Fire Dept./EMS			\$0.00
Year to Date Total	All Other Services			\$1,682.84
Total				\$120,191.25
Care of Prisoners This Month - Not including SNCP Funds				\$34,603.60
Care of Prisoners Year to Date Indigent - Not including SNCP Funds				\$723,709.62
Care of Prisoners Year to Date Inmate Prescriptions/OTC Meds				\$18,926.03
Care of Prisoners Year to Date Dr. Bills				\$6,521.60
Total Cost of Care of Prisoners Year to Date				\$749,157.25
Monies Received for December 2018				\$52,975.21
Balance in IHC Fund as of December 31, 2018				\$822,900.27
Encumbrances as of December 31, 2018				\$275,994.61
		Date	Amount Approved	Amount Denied
	Signatures	1/10/2019	\$0.00	\$0.00
Barbara L. Reedy				
Linda M. Smrkovsky				
John S. Sweetser				

LCBCC Meeting January 10th, 2019
Accounts Payable

12/06/2018	\$86,395.23
12/06/2018	\$6,144.46
12/06/2018	\$10,537.51
12/11/2018	\$50,722.00
12/14/2018	\$291,112.55
12/14/2018	\$21,244.29
12/14/2018	\$3,832.47
12/19/2018	\$150,538.32
12/19/2018	\$10,644.01
12/19/2018	\$2,653.07
12/20/2018	\$1,800.00
12/28/2018	\$230,179.10
12/28/2018	\$5,278.88
12/28/2018	\$4,209.50

P-Cards

November 2018	\$104,541.84
---------------	--------------

Total \$830,964.91

Luna County
Board of County Commissioners

AGENDA 01/10/2019

PAYROLL

12/07/2018	Register # 20180056	\$522,976.98
12/07/2018	*Register # 20180057	\$14,557.83
12/21/2018	Register # 20180058	\$501,111.32
12/19/2018	*Register # 20180059	\$3,422.54
12/21/2018	*Register # 20180060	\$17,527.59
12/21/2018	*Register # 20180061	\$465.07
12/21/2018	*Register # 20180062	\$329.40
12/31/2018	*Register # 20180063	\$12,334.27

Total \$ 1,072,725.00

* Special

Be it remembered that at a regular meeting of the Luna County Board of County Commissioners in Deming New Mexico, on the 10th day of January 2019, the following proceedings were had and entered of record.

RESOLUTION #19-01

NOTICE OF MEETINGS

WHEREAS, the Open Meetings Act, Section 10-15-1 to 4 NMSA 1978, as amended is in effect; and

WHEREAS, meetings of the Luna County Board of County Commissioners desire to comply with the provisions of the aforementioned Act; and

WHEREAS, Section 10-15-1 (D) of the Open Meetings Act requires that the Luna County Board of County Commissioners shall annually make a determination regarding what shall be considered reasonable notice to the public for meetings:

NOW, THEREFORE, BE IT RESOLVED THAT:

1. All meetings shall be held in the County Commission Chambers of the Luna County Courthouse, 700 S. Silver Avenue, Deming, New Mexico or as indicated in the meeting notice.
2. Unless otherwise specified, regular meetings shall be held on the 2nd Thursday of each month at 10:00 a.m. An agenda will be available 72 hours prior to the meeting on the county website and in the office of the County Manager, Luna County Courthouse, 700 S. Silver Avenue, Deming, New Mexico. Notice of changes to the scheduled date of a regular meeting will be given ten (10) days in advance of the meeting date. The notice shall indicate how a copy of the agenda may be obtained.
 - a. Any member of the Board of County Commissioners or the County Manager is authorized to determine those items to be placed on the agenda of a regular meeting.
3. A work session will be held at 9:00 a.m. on the 2nd Thursday of each month prior to the regular meeting. The purpose of the work session is to provide the commissioners with an opportunity to discuss agenda items and other necessary items with the Public and Staff.
4. Special meetings may be called by the Chairperson or a majority of the Commission members upon 72 hours (3 days) notice. The notice shall include an agenda for the meeting or information on how members of the public may obtain a copy of the agenda. The agenda shall be available to the public at least 72 hours before any special meeting.

5. Emergency meetings will be called only under unforeseen circumstances which demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. The Luna County Board of County Commissioners will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chairperson or a majority of the Commission members upon 24 hour notice, unless threat of personal injury or property damage requires less notice. The notice shall include an agenda for the meeting or information on how members of the public may obtain a copy of the agenda. The notice for all emergency meetings will be posted in the Luna County Manager's Office and the Luna County Clerk's Office and notification will be given to the media. A report of any action taken in an emergency meeting shall be sent to the Office of the Attorney General within 10 days unless a state or national emergency has been declared.

Done at Deming, New Mexico this 10th day of January, 2019

Luna County Board of County Commissioners

ATTEST:

Barbara Reedy, Member

Andrea Rodriguez, County Clerk

Linda M. Smrkovsky, Chair

John S. Sweetser, Member

Be it remembered that at a regular meeting of the Luna County Board of County Commissioners in Deming New Mexico, on the 10th day of January 2019, the following proceedings were had and entered of record.

RESOLUTION #19-02

TIMELY PAYMENTS RESOLUTION

WHEREAS, it is sometimes necessary to pay bills and make payments between meetings of the Luna County Board of County Commissioners to take advantage of discounts and make payments in a timely manner.; and

WHEREAS, the Luna County Business Office is and has been the central purchasing office since 1974, and handles the purchasing of goods and services and payment of bills;

NOW THEREFORE, BE IT RESOLVED AND ORDERED that the Luna County Board of County Commissioners does hereby direct the Luna County Manager or Designee to approve vouchers and issue warrants as necessary for signature by the Commission Chairman when the Board is not in session, and that a summary of these vouchers be presented to the Commissioners at their next meeting.

Done at Deming, New Mexico this 10th day of January, 2019

Luna County Board of County Commissioners

ATTEST:

Barbara Reedy, Member

Andrea Rodriguez, County Clerk

Linda M. Smrkovsky, Chair

John S. Sweetser, Member

Be it remembered that at a regular meeting of the Luna County Board of County Commissioners in Deming New Mexico, on the 10th day of January 2019, the following proceedings were had and entered of record.

RESOLUTION #19-03

NOTICE OF FEES

WHEREAS, the Luna County Board of County Commissioners find it necessary to implement certain fees pertaining to copying, recording, business registrations, transaction within the Treasurer's Office, building permit fees, manufactured home/mobile home installation permit fees, and plan review fees, rural addressing service fees; and

NOW THEREFORE, BE IT RESOLVED that the Luna County Board of County Commissioners has determined that the above-mentioned fees be charged as followed:

Copying Fees:

1. Copies of documents, single sided, black and white:
Letter size, (8 1/2" x 11"), legal size, (8" 1/2 x 14"), or tabloid size, (11" x 17") \$0.50
2. Black and white paper map size:
Above tabloid size (11" x 17") up to three (3') feet by four (4') feet \$10.00
3. Black and white paper map size:
Above three (3') feet by four (4') feet up to six (6') feet \$25.00
4. Luna County Addressing Atlas:
Black and White Version \$40.00
Color Version \$60.00
USB Flash Drive \$25.00
Each Additional Layer of Data \$5.00

Requests for Specialty Maps, Data, or Data Sheets shall be detailed in writing to the Office of the County Planner for pricing, which will vary depending on complexity and density of layered information, data type, media type, and production time.

Recording Fees:

DOCUMENTS RECORDED IN THE OFFICE OF THE COUNTY CLERK ARE PUBLIC RECORDS, SUBJECT TO INSPECTION AND DISCLOSURE.

Recording fees are established pursuant to Section 14-8-13 through 17, et seq., NMSA, 1978 . Unless otherwise specified by law, the county clerk shall collect a recording fee of twenty-five dollars (\$25.00) for each document filed or recorded by the county clerk. If the document being filed or recorded contains more than ten

entries to the county recording index, the county clerk shall collect an additional fee of twenty-five dollars (\$25.00) for each additional block of ten or fewer entries to the county recording index from the document. For each fee of twenty-five dollars (\$25.00) collected by the county clerk, eighteen dollars (\$18.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording and filing fund.

If a document being filed or recorded contains fewer than ten entries to the county recording index and is filed or recorded in person in the office of the county clerk by one of the interested persons named on the document, the county clerk shall collect a fee of ten dollars (\$10.00). For each fee of ten dollars (\$10.00) collected by the county clerk, three dollars (\$3.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording and filing fund.

Amounts collected from the equipment recording fee shall be deposited into a restricted account to be used as authorized by Section 14-8-12.2, NMSA, 1978 .

Business Registration Fees:

The annual business registration fee is \$25.00 pursuant to Ordinance No. 5 as Amended.

All licensed locations or premises in Luna County, outside the corporate limits of the City of Deming and the village limits of the Village of Columbus, beginning June 1 each year for the ensuing year, shall pay the following license tax:

(1)	Dispenser's License (Bar and Winery)	\$200.00
(2)	Retailer's License (Package Store)	\$100.00
(3)	Club License.....	\$ 50.00

This fee is due and payable to the County Clerk's Office at the time each business registration is issued on July 1.

Fees for Transactions within Treasurer's Department:

Return payment checks for correct amount **\$5.00**

This fee will partially cover the cost of returning advalorem tax payment checks that are unsigned or are for an incorrect amount.

Return item (NSF) charges **\$30.00**

This fee will not be less than current bank charges. This charge will cover the processing cost of the return items.

Cost to Luna County-Personal Property (Mobile Home) Sale

The administration and enforcement of delinquent personal property advalorem taxes is authorized by Sections 7-38-51 through 56, NMSA 1978.

The delinquent personal property tax sale is authorized by Sections 7-38-57, 58, 59, NMSA 1867.

The County Treasurer is authorized to recover any cost incurred in preparing for the sale. To cover all additional costs of preparing for the personal property tax sale, the Luna County Treasurer hereby imposes the following fees:

- (1) **Delinquent personal property letter service fee** **\$10.00**
This charge would be for all accounts that are delinquents more than 60 days.
- (2) **Demand Warrant Processing Fee** **\$25.00**
This charge would be for all accounts that are delinquent over 180 days.
- (3) **Penalty and Interest**
The P & I charge on accounts that are more than 180 days delinquent will be retained by Luna County to defray the cost of the personal property tax sales.

Building Permit Fees:

Manufactured Home/Mobile Home Installation Permit (MHIP) fee: \$45.00

<u>Building Permit Value</u>	<u>Permit Fee</u>
\$1,000 and less	\$20.00
\$1,001.00 to \$3,000.00	\$20.00 + \$5.00 per \$500.00 increment in value over \$ 1,001.00
\$3,001.00 and over	\$40.00 + \$1.50 per \$1,000.00 increment in value

Plan review fee is waived for standard residential construction projects. Complex residential and all Commercial construction project plan reviews will be +20% of permit fee.

Failure to obtain an approved building permit prior to beginning construction will result in the immediate discontinuance of further work on the project and shall be required to pay double the normal permit fee before a permit is issued.

Rural Addressing Service Fee (new residents):

Administrative processing \$10.00

Subdivision Ordinance Fees:

See Attachment A

NOW, THEREFORE BE IT RESOLVED THAT, this resolution shall be reviewed periodically to determine if revisions are necessary.

Done at Deming, New Mexico this 10th day of January, 2019

Luna County Board of County Commissioners

ATTEST:

Barbara Reedy, Member

Andrea Rodriguez, County Clerk

Linda M. Smrkovsky, Chair

John S. Sweetser, Member

ATTACHMENT A

Schedule of Administrative Fees for Administering the Luna County Subdivision Ordinance

Summary Review Application	\$100.00 or \$10.00 per lot
Preliminary Plat Application	\$200.00 or \$15.00 per lot
RE-submittal of revised or corrected plat application	\$100.00
Final Plat Application	\$100.00 or \$25.00 per lot
Replat	(Same as preliminary and final plat)
Vacation of Plat (including partial vacation)	\$75.00
Vacation of Easement	\$50.00
Variance	\$100.00 per variance
Appeals to County Commission	\$50.00
Claim of Exemption	\$25.00

Where additional review by the County is required above and beyond normal review requirements due to complex, unforeseen, or unique circumstances relating to the proposed plan or plat, then the County may charge additional fees to defray the cost of such reviews.

Be it remembered that at a regular meeting of the Luna County Board of County Commissioners in Deming, New Mexico, on the 10th day of January 2019, the following proceedings were had and entered of record.

RESOLUTION #19-04

DEPOSITORIES, BOARD OF FINANCE AND MEDIA DESIGNATION

BE IT RESOLVED AND ORDERED by the Luna County Board of County Commissioners, the following establishments and persons be designated or appointed in the following capacities of the County of Luna, subject to further order of this Board.

OFFICIAL DEPOSITORIES OF COUNTY FUNDS

First New Mexico Bank,
Wells Fargo New Mexico,
N.A., Deming, NM, First
Savings Bank, FSB, Deming,
NM, New Mexico State
Treasurer's Local
Government Investment
Pool

COUNTY BOARD OF FINANCE

All County Commissioners,
County Treasurer as Executing
Officer, and County Clerk as
the Clerk of the Board of
Finance

OFFICIAL NEWSPAPER AND OTHER MEDIA

Deming Headlight
KOTS/KDEM Radio Station

**Done at Deming, New Mexico this 10th day of January, 2019
Luna County Board of County Commissioners**

ATTEST:

Barbara Reedy, Member

Andrea Rodriguez, County Clerk

Linda M. Smrkovsky, Chair

John S. Sweetser, Member

Be it remembered that at a regular meeting of the Luna County Board of County Commissioners in Deming, New Mexico, on the 10th day January, 2019, the following proceedings were had and entered of record.

RESOLUTION #19-05

NOTICE OF RIGHT TO INSPECT PUBLIC RECORDS

WHEREAS, Luna County Government shall comply with the Inspection of Public Records Act of New Mexico, Section 14-2-1 through 12, NMSA 1978;

WHEREAS, any person wishing to inspect public records may submit an oral or written request to the Custodian of Public Records. However, the procedures set forth in the Act shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty. If a person requesting inspection would like a copy of a public record, a reasonable fee set by the annual Notice of Fees Resolution will be applicable;

WHEREAS, nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record;

WHEREAS, a written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records;

WHEREAS, the custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian;

WHEREAS, in the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of records from that person's custody or control, the records' location and the name and address of the custodian;

WHEREAS, for the purposes of the Act, "written request" includes an electronic communication, including email or facsimile; and

WHEREAS, requests to inspect public records should be submitted to the Custodian of Public Records.

NOW THEREFORE BE IT RESOLVED, the Luna County Board of County Commissioners designates the Assistant County Manager as the Custodian of Public Records. Contact information is as follows:

Luna County Manager
Luna County Courthouse
700 S. Silver Avenue
Deming, NM 88030
Phone: (575) 546-0494
Fax: (575) 544-4293
ipra@lunacountynm.us

Done at Deming, New Mexico this 10th day of January 10, 2019

Luna County Board of County Commissioners

ATTEST:

Barbara Reedy, Member

Andrea Rodriguez, County Clerk

Linda M. Smrkovsky, Chair

John S. Sweetser, Member

RESOLUTION # 19-06

LUNA COUNTY ADOPTION OF REQUIRED COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL CERTIFICATIONS AND COMMITMENTS

WHEREAS, municipalities, counties or other entities that accept Community Development Block Grant (CDBG) funds must adopt certain required federal regulations; and

WHEREAS, Luna County (hereinafter referred to as the Grantee) wishes to ensure compliance with federal regulations by adopting the following required certifications and commitments:

Citizen Participation: certifies its commitment to citizen participation by preparing and adopting a Citizen Participation Plan that includes ways to encourage public input using various methods to reach the public and assures that citizens are provided reasonable notice and timely access to local meetings, per the Open Meetings Act (NMSA 1978, Chapter 10, Article 15)

Fair Housing: certifies its commitment to the Fair Housing Act of 1968 to affirmatively further fair housing, which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status, or national origin

Residential Anti-Displacement:

certifies its compliance with the Uniform Relocation Assistance and Real & Relocation Assistance Section 3 Procurement Property Acquisition Policies Act of 1970, whose purpose is to provide uniform, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG-funded project or activity

Section 3: certifies its commitment to Section 3, a provision of the Housing and Urban Development (HUD) Act of 1968, which requires recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low and very low-income residents in connection with projects and activities in their community. Attached is the Grantee Section 3 hiring information.

Procurement: certifies its compliance with federal procurement code (24 CFR Part 85.36) and New Mexico Procurement Code (§13-1-120 NMSA 1978) by adopting a procurement policy annually for CDBG projects

NOW THEREFORE BE IT RESOLVED, that Luna County adopts the above CDBG certifications and commitments that must be adopted annually.

PASSED, APPROVED, SIGNED AND ADOPTED at a duly called and convened regular meeting of the governing body of the Luna County Commissioners this 10th day of January, 2019.

Linda Smrkovsky, Commission Chair

ATTEST:

Andrea Rodriguez, Luna County Clerk

EXHIBIT 1-P

CITIZEN PARTICIPATION PLAN WITH REQUIRED ELEMENTS

Introduction

In accordance with the 1987 revisions to the Housing and Community Development Act and in an effort to further encourage citizen participation, Luna County has prepared and adopted this Citizen Participation Plan.

Objective A

Luna County will provide for and encourage citizen participation within its area of jurisdiction, with particular emphasis on participation by persons of low and moderate income. *Action items:*

1. *Adopt and circulate an Open Meetings Resolution which provides citizens with reasonable notice of county/municipality upcoming meetings, actions and functions.*
2. *Develop press releases on county/municipality meetings, actions and hearings, and circulate to newspapers, radio and television media.*
3. *Develop and maintain listing of groups and representative of low and moderate income persons, and include on mailing lists of announcements, notices, press releases, etc.*

Objective B

Luna County will provide citizens with reasonable and timely access to local meetings, information and records relating to the proposed and actual use of CDBG funds. *Action items:*

1. *Public notices, press releases, etc., should allow for a maximum length of notice to citizens.*
2. *Appropriate information and records relating to the proposed and actual use of CDBG funds must be available upon request to all citizens. Personnel and income records may be exempted from these requirements.*
3. *Meetings, hearing, etc., should be conducted at times and locations conducive to public attendance, e.g., evenings, Saturdays.*

Objective C

Luna County will provide technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals. *Note: the level and type of assistance is to be determined by the county/municipality. Action items:*

1. *Low and moderate income groups should be advised that technical assistance, particularly in the area of community development, is available from the county/municipality upon request.*
2. *Document technical assistance provided to such groups and has documentation available for review.*

Objective D

 Luna County will provide a minimum of two public hearings to obtain citizen participation and respond to proposals and questions at all stages of the Community Development Block Grant Program. *Action items:*

1. *Advise citizens of the CDBG program objectives, range of activities that can be applied for and other pertinent information.*
2. *Conduct a minimum of two public hearings:*
 - a. *One public hearing will be held to advise citizens of the program objectives and range of activities that can be applied for, and to obtain the citizen's views on community development and housing needs, to include the needs of low and moderate income people. This hearing will take place prior to the selection of the project to be submitted to the state for CDBG funding assistance.*
 - b. *A second public hearing will be held to review program performances, past use of funds and make available to the public its community development and housing needs, including the needs of low and moderate income families, and the activities to be undertaken to meet such needs.*
3. *Publish public hearing notices in the non-legal section of newspapers or in other local media. Evidence of compliance with these regulations will be provided with each CDBG application, i.e., hearing notice minutes of public meetings, list of needs and activities to be undertaken, etc. Amendments to goals, objectives and applications are also subject to public participation.*

Objective E

 Luna County will provide timely written answers to written complaints and grievances within 15 working days where practical. *Action items:*

1. *Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.*
2. *Allow for appeal of a decision to a neutral authority.*
3. *File a detailed record of all complaints or grievances and responses in one central location with easy public access.*

Objective F

 Luna County will identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate. *Action items:*

1. *Identify areas where large majorities of non-English speaking persons reside and make appropriate provisions when issues affecting these areas are to be discussed at public meetings, hearings, etc. Appropriate provisions will include having interpreters available at the meeting and having briefing material available in the appropriate language.*
2. *Maintain records/rosters of public hearing attendees and proceedings to verify compliance with this objective.*

LUNA COUNTY RESOLUTION NO.
Fair Housing Policy

Section 1. POLICY

It is the policy of Luna County to provide, within constitutional limitations, for fair housing throughout the Luna County.

Section 2. DEFINITIONS

1. "Aggrieved Person" includes any person who:
 - a. claims to have been injured by a discriminatory housing practice; or
 - b. believes that they will be injured by a discriminatory housing practice that is about to occur.
2. "Chief Elected Official" means the person who holds the highest elected position of the local unit of government and who is signatory to the Small Cities Community Development Block Grant agreement with the Local Government Division.
3. "Complainant" means the person (including the chief elected official) who files a complaint under Section 10.
4. "Discriminatory housing practice" means an act that is unlawful under Section 4, 5 or 6 of this policy.
5. "Dwelling" means any building, structure or portion thereof which is occupied as, designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
6. "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with--
 - a. A parent or another person having legal custody of such individual or individuals; or
 - b. the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant, or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

7. "Family" includes a single individual.

8. "Handicap" means, with respect to a personB

a. a physical or mental impairment which substantially limits one or more of such person's major life activities;

b. a record of having such an impairment; or

c. being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to, a controlled substance (as defined in Section 102 of the Controlled Substances Act [21 U .S.C. , 802]).

9. "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

10. "Respondent" meansB

a. the person or other entity accused in a complaint of an unfair housing practice; and

b. any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under Section 10.

11. "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant.

Section 3. UNLAWFUL PRACTICE

Subject to the provisions of subsection (b) and Section 7, the prohibitions against discrimination in the sale or rental of housing set forth in Section 3 shall apply to:

1. All dwellings except as exempted by subsection (b).

2. Nothing in Section 4 shall apply to:

a. Any single-family house sold or rented by an owner:

Provided, that such private individual owner does not own more than three such single-family houses at anyone time: Provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale, or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at anyone time: Provided further, that the sale or rental of any such single-family house shall be excepted from the application of this policy only if such house is sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson or person, and

- a. without the publication, posting or mailing, after notice of any advertisement or written notice in violation of Section 4(c) of this policy, but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or
 - b. rooms or units in dwellings contained living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as their residence.
3. For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if:
 - a. they have, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; or
 - b. they have, within the preceding twelve months, participated as agent, other than in the sale of their own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

- c. they are the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Section 4. DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

As made applicable by Section 3 and except as exempted by Sections 3(b) and 7, it shall be unlawful:

refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, handicap, familial status or national origin.

2. To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, handicap, familial status or national origin.
3. To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination
4. To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
5. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.

Section 5. DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

1. In general -- It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

2. Definition--As used in this Section, the term "residential real estate-related transaction" means any of the following:

a. The making or purchasing of loans or providing other financial assistanceB

\$ for purchasing, constructing, improving, repairing or maintaining a dwelling; or

\$ secured by residential real estate.

b. The selling, brokering or appraising of residential real property

3. Appraisal Exemption--Nothing in this policy prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status or national origin.

Section 6. DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against them in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status or national origin.

Section 7. EXEMPTION

Nothing in this policy shall prohibit a religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by, or in conjunction with, a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin or handicap. Nor shall anything in this policy prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

Section 8. ADMINISTRATION

1. The authority and responsibility for administering this policy shall be in the chief elected official of the County of Hidalgo.

2. The chief elected official may delegate any of these functions, duties and powers to employees of the Luna County or to boards of such employees, including functions, duties and powers with respect to investigating, conciliating, hearing, determining ordering, certifying, reporting or otherwise acting as to any work, business or matter under this policy. The chief elected official shall by rule prescribe such rights of appeal from the decisions of their hearing examiners, to other hearing examiners or to other offices in the Luna County, to boards of officers or to themselves, as shall be appropriate and in accordance with law.
3. All Luna County departments and agencies shall administer their programs and activities relating to housing and community development in a manner affirmatively to further the purposes of this policy and shall cooperate with the chief elected official to further such purposes.

Section 9. EDUCATION AND CONCILIATION

Immediately after the enactment of this policy, the chief elected official shall commence such educational conciliatory activities as will further the purposes of this policy. They shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this policy and the suggested means of implementing it and shall endeavor with their advice to work out programs of voluntary compliance and enforcement.

Section 10. ENFORCEMENT

1. Any person who claims to have been injured by a discriminatory housing practice or who believes that they will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "aggrieved person") may file a complaint with the chief elected official. Complaints shall be in writing and shall contain such information, and be in such form as the chief elected official requires. Upon receipt of such a complaint, the chief elected official shall furnish a copy of the same to the person or persons who have committed, or are about to commit, the alleged discriminatory housing practice. Within thirty days after receiving a complaint or within thirty days after the expiration of any period reference under subsection (c), the chief elected official shall investigate the complaint and give notice in writing to the aggrieved person whether they intend to resolve it. If the chief elected official decides to resolve the complaints, they shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this policy without the written consent of the persons concerned. Any employee of the chief elected official who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be [med not more than \$1 ,000 or

imprisoned not more than one year .

2. A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the chief elected official, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.
3. If within thirty days after a complaint is filed with the chief elected official, the chief elected official has been unable to obtain voluntary compliance with this policy, the aggrieved person may, within thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The chief elected official will assist in this filing.
4. If the chief elected official has been unable to obtain voluntary compliance within thirty days of the complaint, the aggrieved person may, within thirty days thereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this policy, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.
5. In any proceeding brought pursuant to this Section, the burden of proof shall be on the complainant.
6. Whenever an action filed by an individual comes to trial, the chief elected official shall immediately terminate all efforts to obtain voluntary compliance.

Section 11. INVESTIGATIONS/SUBPOENAS/GIVING OF EVIDENCE

1. In conducting an investigation, the chief elected official shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: Provided, however, that the chief elected official first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The chief elected official may issue subpoenas to compel their access to, or the production of, such materials, or the appearance of such persons and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States District Court for the district in which the investigation is taking

place. The chief elected official may administer oaths.

2. Upon written application to the chief elected official, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the chief elected official to the same extent and subject to the same limitations as subpoenas issued by the chief elected official. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at their request.
3. Witnesses summoned by subpoena of the chief elected official shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.
4. Within five days after service of a subpoena upon any person, such person may petition the chief elected official to revoke or modify the subpoena. The chief elected official shall grant the petition if they find that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
5. In case of contumacy or refusal to obey a subpoena the chief elected official, or other person at whose request it was issued, may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served or transacts business.
6. Any person who willfully fails or neglects to attend and testify, or to answer any lawful inquiry, or to produce records, documents or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the chief elected official shall be fined not more than \$1,000 or imprisoned not more than one year or both. Any person who, with intent thereby to mislead the chief elected official, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document submitted to the chief elected official pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct. entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.
7. The Luna County attorney shall conduct all litigation in which the chief elected official participates as a party or as amicus pursuant to this policy.

Section 12. ENFORCEMENT BY PRIVATE PERSONS

1. The rights granted by Sections 3, 4, 5 and 6 may be enforced by civil actions in the appropriate United States district, state or local court. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: Provided, however, that the court shall continue such civil case brought pursuant to this Section or Section 10 (d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the chief elected official are likely to result in satisfactory settlement of the alleged discriminatory housing practice complained of in the complaint made to the chief elected official and which practice forms the basis for the action in court: And provided, however, that any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the: authority of this policy and involving a bona fide purchaser, encumbrance or tenant without actual notice of the filing of a complaint or civil action under the provisions of this policy shall not be affected.
2. The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order or other order and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, that the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Section 13. INTERFERENCE, COERCION OR INTIMIDATION

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Sections 3, 4, 5, or 6 of this policy. This Section may be enforced by appropriate civil action.

Section 14. SEPARABILITY OF PROVISIONS

If any provision of this policy or the application thereof to any person or circumstances is held invalid, the remainder of the policy and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Section 15. PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

1. any person because of their race, color, religion, sex, handicap, familial status, or national origin and because they are or have been selling,

purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service organization or facility relating to the business of selling or renting dwellings; or

2. any person because they are or have been, or in order to intimidate such person or any other person or any class of persons from:
 - a. participating, without discrimination because of race, color, religion, sex, handicap, familial status or national origin, or in any of the activities, services organizations, or facilities described in subsection 15(a); or
 - b. affording another person or class of persons opportunity or protection so to participate; or
 3. any citizen because they are or have been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status or national origin, in any of the activities, services, organizations or facilities described in subsection 15 (a), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate -- shall be fined not more than \$1,000, or imprisoned not more than one year or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years or both; and if death results shall be subject to imprisonment for any term of years or for life and/or to other applicable local/state/federal laws.
-

Exhibit 1-R

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN WITH REQUIRED ELEMENTS

Residential Anti-Displacement and Relocation Assistance Plan

I. Background/Introduction

Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42, specify that a grantee under the Community Development Block Grant (CDBG) must certify that it has in effect and is following a “residential Anti-displacement and relocation assistance plan” (Plan). As a CDBG grantee, Luna County must certify to State of New Mexico Department of Finance and Administration Local Government Division that it has and is following such a Plan.

The Plan must include three components: 1) one-for-one replacement requirements for lower-income housing units, 2) relocation assistance, and 3) a description of the steps Luna County will take to minimize displacement.

II. Activities Covered by the Plan

All activities involving the use of CDBG funds that cause displacement as a direct result of demolition or conversion of a lower-income dwelling are subject to the requirements specified in the Plan. Activities for which funds are first obligated on or after September 30, 1988 are subject to the requirements specified in the Plan, without regard to the source year of the funds.

III. Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) govern displacement that directly results from acquisition, rehabilitation, or demolition of real property when federal funds are used. Luna County’s Residential Anti-displacement and Relocation Assistance Plan is in no way intended to supersede the URA. CDBG assisted activities may still be subject to the requirements of the URA.

IV. One-for-One Replacement Units

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income units. Replacement lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

- A. The units must be located within Luna County to the extent feasible, the units shall be located within the same neighborhood as the units replaced

- B. The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be in accordance with applicable local housing occupancy codes. The units may not be replaced with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless Luna County has provided information demonstrating that such a proposed replacement is consistent with the needs assessment contained State of New Mexico Department of Finance and Administration Local Government Division HUD-approved Consolidated Plan.
- C. The units must be in standard condition and must at a minimum meet Section 8 Program Housing Quality Standards. Replacement lower-income units may include units brought from a substandard condition to standard condition if: 1) no person was displaced from the unit; and 2) the unit was vacant for at least 3 months before execution of the agreement between Luna County and the property owner.
- D. The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under Section F below and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.
- E. The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance
- F. Before Luna County enters into a contract committing it to provide CDBG funds for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, Luna County must make public and submit in writing to State of New Mexico Department of Finance and Administration Local Government Division the following information:
- 1 A description of the proposed assisted activity;
 - 2 The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
 - 3 A time schedule for the commencement and completion of the demolition or conversion;
 - 4 The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data is not available at the time of the submission to State of New Mexico Department of Finance and Administration Local Government Division, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwellings units by size shall be submitted and disclosed to the public as soon as it is available;
 - 5 The source of funding and time schedule for the provision of replacement dwelling units;
 - 6 The basis for concluding that each replacement unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
 - 7 Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the needs assessment contained in

the State of New Mexico Department of Finance and Administration Local
Government Division Consolidated Plan.

- G. The one-for-one replacement requirements may not apply if HUD determines, based on objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within Luna County. In making such a determination, State of New Mexico Department of Finance and Administration Local Government Division will consider such factors as vacancy rates, numbers of lower-income units in Luna County and the number of eligible families on the Section 8 waiting list.

V. Relocation Assistance

Each lower-income person who is displaced as a direct result of CDBG assisted demolition or conversion of a lower-income dwelling shall be provided with relocation assistance.

Relocation assistance includes advisory services and reimbursement for moving expenses, security deposits, credit checks, other moving expenses, including certain interim living costs, and certain replacement housing assistance.

Displaced persons have the right to elect, as an alternative to the benefits described in this Plan, to receive benefits under the URA, if they determine that it is in their best interest to do so. The following relocation assistance shall be available to lower-income displacement persons:

- A. Displaced lower-income persons will receive the relocation assistance required under 49 CFR 24, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the person elects to receive assistance under the URA or the assistance required by CDBG regulations. Relocation notices must be distributed to the affected persons in accordance with 49 CFR 24.203 of the URA;
- B. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit and for credit checks required to rent or purchase the replacement dwelling unit;
- C. Actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:
 - 1. The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or
 - 2. The person is displaced from a lower-income dwelling unit, none of the comparable replacement units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available through one-for-one replacement requirements
- D. Replacement Housing Assistance. Displaced persons are eligible to receive one of the following two forms of replacement housing assistance:
 - 1. Each person shall be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of

utilities for a replacement dwelling to the "Total Tenant Payment", as determined under 24 CFR 813.107. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance under the Section 8 program. Where Section 8 assistance is provided to the displaced person,

Luna County must provide the person with referrals to comparable units whose owners are willing to participate in Section 8 program to the extent that cash assistance is provided, it will be provided in installments.

2. In lieu of the housing voucher, certificate or cash assistance described above, the person may elect to receive a lump sum payment allowing them to secure participation in a housing cooperative or mutual housing association. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the

"Total Tenant Payment", as determined under 24 CFR 813.107, from the monthly cost of rent and average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings in a federally insured financial institution conducting business within Luna County.

Displaced lower-income tenants shall be advised of their right to elect relocation assistance pursuant to the URA and the regulations at 49 CFR 24 as an alternative to the relocation assistance available under CDBG regulations.

VI. Eligibility for Relocation Assistance

A lower-income person is eligible for relocation assistance if they are considered to be a "displaced person" as defined in 24 CFR 42.305. A displaced person means a lower-income person who, in connection with an activity assisted under the CDBG program, permanently moves from real property or permanently moves personal property from real property as a direct result of demolition or conversion of a lower-income dwelling.

For purposes of this definition, a permanent move includes a move made permanently and:

- A. After notice by the owner to move from the property, if the move occurs on or after the date of the submission of a request to Luna County for CDBG assistance that is later approved for the requested activity; or
- B. After notice by the owner to move from the property, if the move occurs on or after the date of the initial official submission to HUD of the consolidated plan under 24 CFR Part 91 describing the assisted activity; or
- C. Before the dates described in A & B above, if Luna County or State of New Mexico Department of Finance and Administration Local Government Division determines that the displacement was a direct result of conversion or demolition in connection with a CDBG assisted activity; or
- D. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
 1. The tenant moves after execution of the CDBG agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is

provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent before such agreement, or the total tenant payment as determined under 24 CFR 813.107 if the tenant is lower-income, or 30 percent of gross household income if the tenant is not lower-income.

2. The tenant is required to relocate temporarily, does not return to the building/complex, and either is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.
3. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

If the displacement occurs on or after the appropriate date described in A & B above, the lower-income person is not eligible for relocation assistance if:

- A. The person is evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the Luna County determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- B. The person moved into the property on or after the date described in A & B above after receiving written notice of the expected displacement; or
- C. Luna County determines that the displacement was not a direct result of the CDBG assisted activity and the State of New Mexico Department of Finance and Administration Local Government Division concurs with this determination.

VII. Minimizing Displacement

The CDBG regulations regarding the demolition or conversion of lower-income dwelling units are designed to ensure that lower-income persons are provided with adequate, affordable replacement housing. Naturally, involuntary displacement should be discouraged whenever a reasonable alternative exists. Involuntary displacement is extremely disruptive and disturbing, especially to lower-income persons who do not have the means to locate alternative housing.

There are various ways that displacement can be minimized. The following are steps that will be taken to minimize the involuntary displacement of lower-income persons when CDBG funds are involved:

- A. **Screening of Applications** All CDBG applications will be reviewed to determine whether involuntary displacement is likely to occur. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that alternatives are not available.
- B. **Acquisition of Property** Applicants who apply for CDBG funds to acquire property for the

development of lower-income housing will be encouraged to purchase vacant land. In the case of in-fill and other projects where this is not feasible and the project involves potential displacement, the applicant shall agree to allow the displaced lower-income person(s) to occupy the new housing at an affordable rent.

Applicants who utilize CDBG funds to rehabilitate or convert a lower-income unit to a non-residential use will be required to supply replacement housing consistent with paragraph IV, as well as relocation assistance.

- C. **Cost of Relocation Assistance** The cost of any required relocation assistance and the provision of replacement housing will be borne by the applicant and may be paid for out of CDBG funds awarded to the project.

VIII. Definitions

- A. "Comparable replacement dwelling unit" means a dwelling unit that:
- 1 Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
 - 2 Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under 24 CFR 813.107 after taking into account any rental assistance the household would receive.
- B. "Lower-income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
- C. "Standard condition" means units that at a minimum meet the Existing Housing Quality Standards of the Section 8 rental subsidy program.
- D. "Substandard condition suitable for rehabilitation" means units with code violations that can be brought to Section 8 Housing Quality Standards within reasonable monetary amounts.
- E. "Vacant occupiable dwelling unit" means a dwelling unit that is in a standard condition; a vacant dwelling unit that is in substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by _____ Luna County _____ covering the rehabilitation or demolition.

IX. Grievances

The _____ Luna County _____ will provide timely written answers to written complaints and grievances within 15 working days where practical. Action items:

- A. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
- B. Allow for appeal of a decision to a neutral authority.

- C. File a detailed record of all complaints or grievances and responses in one central location with easy public access.

IX. Certification

The Luna County herewith certifies to follow the Anti-displacement relocation plan described above and adopt the plan by resolution annually.

Plan Adoption Date: 1/10/19

Adoption Instrument: Resolution

Certified By: _____ Date _____

Commission Chair

Copy to Local Government Division with attachments

EXHIBIT 1-T

SECTION 3 PLAN WITH REQUIRED ELEMENTS

The _____ County of Luna _____ is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of small local businesses and the hiring of low income residents of the community.

The _____ County of Luna _____ has appointed _____ Glory Juarez _____ as the Section 3 Coordinator, to advise and assist key personnel and staff on Section 3, to officially serve as focal point for Section 3 complaints, and as the on-site monitor of prime contractors and sub-contractors to insure the implementation and enforcement of their Section 3 plans. The approval or disapproval of the Section 3 plan is the ultimate responsibility of the _____ County of Luna _____. Documentation of efforts will be retained on file for monitoring by the state.

Therefore, the _____ County of Luna _____ shall:

1. Hiring
 - a. Advertise for all _____ County of Luna _____ positions in local newspapers
 - b. List all _____ County of Luna _____ job opportunities with the State Employment Service
 - c. Give preference in hiring to lower income persons residing in the _____ County of Luna _____. This means that if two equally qualified persons apply and one is a resident of the _____ County of Luna _____ and one is not, the resident will be hired
 - d. Maintain records of _____ County of Luna _____ hiring as specified on this form

_____ <u>County of Luna</u> _____ ANTICIPATED/ACTUAL HIRES			_____ HIRING YEAR	
PLANNED			ACTUAL	
Job Classification	# of Positions to be Filled	# of Positions to be Filled by Lower Income _____ <u>County of Luna</u> _____ Residents	# of Positions Filled	Positions Filled by Lower Income _____ <u>County of Luna</u> _____ Residents
None				

- Chart for Section 3 Plan **MUST** be filled out in its entirety.

2. Contracting

- a. The County of Luna will compile a list of businesses, suppliers and contractors located in the County of Luna.
- b. These vendors will be contacted for bid or quotes whenever the County of Luna requires supplies, services or construction.
- c. Preference will be given to small local businesses. This means if identical bids/quotes are received from a small business located within the County of Luna and one from outside the County of Luna, the contract will be awarded to the business located within the community.

3. Training

The County of Luna shall maintain a list of all training programs operated by the County of Luna and its agencies and will direct them to give preference to County of Luna residents. The County of Luna will also direct all CDBG sponsored training to provide preference to County of Luna residents.

4. CDBG Contracts

All CDBG bid proposals and contracts shall include the following Section 3 language.

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
- b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued there-under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the

subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.

- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

The County of Luna shall require each contractor to prepare a written Section 3 plan as a part of their bids on all jobs exceeding \$100,000. All Section 3 plans shall be reviewed and approved by the City's Equal Opportunity Section 3 Compliance Officer and retained for monitoring by the state.

The County of Luna will maintain all necessary reports and will insure that all contractors and subcontractors submit required reports.

LOWER INCOME CLARIFICATION

A family who resides in County of Luna and whose income does not exceed the income limit for the size of family as per the attached Section 8 Income Limit for County of Luna. Information contained in our Section 3 Plan reflects the status of the County of Luna employees regarding lower income considerations based on their salary paid by the County of Luna.

Commission Chair

Date

RESOLUTION #
LUNA COUNTY CDBG PROCUREMENT POLICY

A. CODE OF CONDUCT

No employee, officer, or agent of the grantee shall participate in the selection or in the award or administration of a contract supported by CDBG funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above has a financial or other interest in the firm selected for award.

No officer, employee, or grantee shall solicit or accept gratuities, favors or anything of monetary value from the contractors, potential contractors, or parties to sub agreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Any alleged violations of these standards of conduct shall be referred to the District Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to: dismissal or transfer; when violations or infractions appear to be substantial in nature, the matter may be referred to appropriate officials for criminal investigation and possible prosecution.

B. PROCUREMENT PROCEDURES

The grantee designated purchasing officer responsible for procurement of services, supplies, equipment or construction obtained with CDBG funds shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the grantee, an analysis to determine which approach would be the most economical shall be undertaken. Procurement requirements, however, may not be divided so as to constitute a small purchase.

The purchasing officer shall take affirmative steps to assure that small and minority firms, and women's business enterprises, are solicited whenever they are potential qualified sources. The purchasing officer shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms, and women's business enterprises. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses. Where possible, evaluation criteria will include a factor with an appropriate weight for these firms.

**LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS**

**RESOLUTION NO. 19-07
Proposed Inter/Intra Fund Budget Increases**

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

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

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

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

NOW THEREFORE BE IT RESOLVED that the Luna County Board of County Commissioners hereby adopts the changes to the County's Fiscal Year 107, July 1, 2018 through June 30, 2019 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 10th DAY OF JANUARY, 2019.

LUNA COUNTY

Chairperson

ATTEST:

Andrea Rodriguez, Luna County Clerk

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

SCHEDULE OF BUDGET ADJUSTMENTS			Budget Resolution Number 19-07 Proposed Inter/Intra FUND Budget Increase						Entity Code DFA Resolution Number	
ITEM NO	Adjustment Type	Fund/ DFA Fund	Dept.	From	Amount	To	Amount	Purpose	Approved Budget Balance	Adjusted Budget Balance
One	Increase	610/21800	Drug Investigations - Operation Stonegarden	610/21800	\$ 62,276.05	610-08-2012 Equip/Supplies/Mtn/ Repairs	\$ 13,151.05	To pay for items needed to perform grant objectives for Operation Stonegarden.	\$ -	\$ 13,151.05
						610-08-2101 Professional/Contract Services	\$ 49,125.00	To pay for items needed to perform grant objectives for Operation Stonegarden.	\$ -	\$ 49,125.00
Two	Increase	401/11000	General Fund - Dispatch	401/11000	\$ 3,000.00	401-20-2005 Salaries - Overtime	\$ 3,000.00	To pay for overtime to cover shifts due to staff shortages.	\$ 7,000.00	\$ 10,000.00
Three	Increase	411/21800	Community Maintenance and Improvements	411/21800	\$ (100,000.00)	411-77-1471 (Revenue) 2018 Cap Appr Pro - Roads	\$ (100,000.00)	To allow for accounting of revenue and expenditures for the 2018 Capital Appropriation Project No. C1182642 for the plan, design and construction of road and drainage improvements in Luna County.	\$ -	\$ (100,000.00)
					\$ 100,000.00	411-00-2471 2018 Cap Appr Pro - Roads	\$ 100,000.00	To allow for accounting of revenue and expenditures for the 2018 Capital Appropriation Project No. C1182642 for the plan, design and construction of road and drainage improvements in Luna County.	\$ -	\$ 100,000.00
					\$ 65,276.05		\$ 65,276.05		\$ 7,000.00	\$ 72,276.05

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

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

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS

Barbara L Reedy, District 1

Linda M. Smrkovsky, District 2

John S. Sweetser, District 3



ATTEST:

Andrea Rodriguez, Luna County Clerk

Entered By:

Date

Checked By:

Date

**LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS**

**RESOLUTION NO. 19-08
Proposed Intra/Inter Department Transfers**

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

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

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

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

NOW THEREFORE BE IT RESOLVED that the Luna County Board of County Commissioners hereby adopts the changes to the County's Fiscal Year 107, July 1, 2018 through June 30, 2019 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 10th DAY OF JANUARY, 2019.

LUNA COUNTY

Chairperson

ATTEST:

Andrea Rodriguez, Luna County Clerk

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

Budget Resolution Number 19-08

Proposed Intra/Inter Department Transfer

ITEM NO	Adjustment Type	Fund/ DFA Fund	Dept.	From	FROM Current Balance	Transfer amount	TO Line Number	Transfer Amount	Purpose
One	Transfer	609/22600	Adult Detention	609-21-2181 Inmate Housing	\$38,000.00	\$15,000.00	609-21-2010 Mileage/Per Diem	\$15,000.00	To pay for training classes and travel required to meet NMC Accrediation requirements.
Two	Transfer	801/59900	Entertainment Complex	801-80-2002 Salaries - Full-Time	\$84,209.86	\$1,500.00	801-80-2004 Salaries - Holiday Pay	\$1,500.00	To pay for holiday pay for remainder of fiscal year.
Three	Transfer	401/11000	General Fund - Commission	401-00-2101 Professional/Contract Services	\$88,726.20	\$2,500.00	401-00-2006 Postage	\$500.00	To allow for spending through remainder of fiscal year.
							401-00-2491 Commissioner Expense	\$2,000.00	To allow for spending through remainder of fiscal year.
					\$210,936.06	\$19,000.00		\$19,000.00	

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

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

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS

Barbara L. Reedy, District 1

Linda M. Smrkovsky, District 2

John S. Sweetser, District 3



ATTEST:

Andrea Rodriguez, Luna County Clerk

Entered By:

Date

Checked By:

Date

AWAITING RESOLUTION 19-09
DESIGNATING TREASURER TO REQUIRE COLLATERALIZATION

AWAITING RESOLUTION 18-50

RESOLUTION FOR NM COLONIAS INFRASTRUCTURE 2019 FUNDING

SECOND AMENDED JOINT POWERS AGREEMENT NEW MEXICO CAP ENTITY

This Second Amended Joint Powers Agreement (the “Agreement”) creating the New Mexico CAP Entity (the “New Mexico CAP Entity”) is entered into by and between the Village of Santa Clara, the Cities of Deming, Lordsburg, the Counties of Catron, Grant, Luna, and Hidalgo, other parties recognized by the State of New Mexico as political subdivisions: the Upper Gila Irrigation Association, the Fort West Irrigation Association, the Gila Farm Irrigation Association, the Gila Hotsprings Irrigation Association, the Hidalgo Soil & Water Conservation District, the San Francisco Soil & Water Conservation District, the Grant Soil & Water Conservation District, and the Interstate Stream Commission (the “ISC” or the “Commission”), , all such entities being political subdivisions as defined in the Joint Powers Agreements Act, NMSA 1978, Section 11-1-2. The entities listed above shall collectively be referred to as the Parties to this Agreement. This Agreement will become effective upon approval by the Department of Finance and Administration pursuant to NMSA 1978, Section 11-1-3.

RECITALS

WHEREAS, pursuant to the Colorado River Basin Project Act of 1968 and the Arizona Water Settlements Act of 2004, Pub. L. 108-451, 118 Stat. 3478 (“AWSA”), an annual average of 14,000 acre-feet per year of AWSA water is allocated to New Mexico for beneficial use in New Mexico (“AWSA water”); and

WHEREAS, as identified in Section 212(i) of the AWSA, the NM Unit Fund is a fund established in the State Treasury and administered by the ISC;

WHEREAS, Section 212(i) of the AWSA provides that withdrawals from the NM Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico;

WHEREAS, in 2012, the Bureau of Reclamation made the first of ten (10) equal, annual deposits into the New Mexico Unit Fund in accordance with Section 107(a)(2)(D)(i) of the AWSA;

WHEREAS, on November 24, 2014, the ISC, in an open meeting, voted to pursue a New Mexico Unit of the Central Arizona Project (“NM Unit”) and to notify the Secretary of the Interior that the State of New Mexico intends to construct a NM Unit; and

WHEREAS, a NM Unit means the unit or units of the Central Arizona Project in New Mexico to be designed, constructed, operated and maintained to use the AWSA water; and

WHEREAS, pursuant to the AWSA, the Secretary of the Interior has the authority to design, build, operate and maintain a NM Unit, but must transfer that authority to the New Mexico CAP Entity upon request by the New Mexico CAP Entity; and

WHEREAS, the Secretary of the Interior shall divert water and exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement (“CUFA”) as ratified by the AWSA, solely for the benefit of the New Mexico CAP Entity and for no other purpose; and

WHEREAS, the Parties agree that, once diverted or stored, the AWSA water should be managed solely for the benefit of the New Mexico CAP Entity, subject to all governing laws; and

WHEREAS, pursuant to the AWSA, the New Mexico CAP Entity shall own and hold title to all portions of the NM Unit constructed pursuant to the New Mexico Unit Agreement; and

WHEREAS, the New Mexico Unit Agreement (“NM Unit Agreement”) is a contract entered into between the Secretary of the Interior and the New Mexico CAP Entity to effectuate the terms of the AWSA and the CUFA; and

WHEREAS, pursuant to the CUFA, as ratified by the AWSA, the State of New Mexico, acting through the ISC, has the authority to form or designate the New Mexico CAP Entity; and

WHEREAS, the Parties desire to create and serve as the New Mexico CAP Entity, for the purposes of planning, designing, building, operating and maintaining a NM Unit and for the purpose of developing other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico; and

WHEREAS, consistent with the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the Parties jointly have and will exercise the powers described in this Agreement; and

WHEREAS, the Parties desire to obtain all benefits from (1) the diversion and beneficial use of the AWSA water (2) the development of other water utilization alternatives to meet water supply demands in the Southwest Planning Region of New Mexico, and (3) the exercise of rights and authorities by the Secretary of the Interior pursuant to Section 212(c)(4) of the AWSA, Pub. L. 108-451, 118 Stat. at 3528.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. Authorizing Law

This Joint Powers Agreement (“JPA” or “Agreement”) is entered into pursuant to the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

II. Purposes

The purposes of this Agreement are to:

- (a) Create the New Mexico CAP Entity.
- (b) Allow the New Mexico CAP Entity to exercise its authority and power to execute and implement the NM Unit Agreement.
- (c) Allow the New Mexico CAP Entity to investigate and/or obtain, through lease, purchase or other transfer mechanism, the right to operate, manage and/or utilize water resources and infrastructure currently owned by Freeport-McMoRan Inc. (FMI) as a water utilization alternative to meet water supply demands in the Southwest Water Planning Region of New Mexico pursuant to Section 212(i) of the AWSA.
- (d) Allow, after the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019) and the development of specific policies and criteria for the evaluation, prioritization and implementation of proposed projects, a portion of the NM Unit Fund to be used for the planning, design, and construction of other water utilization alternatives to meet water supply demands in the Southwestern Planning Region of New Mexico, and to provide for the planning and development of water utilization projects that will improve the quality of life and encourage economic development in the region in an efficient and cost-effective manner.

III. Representations and Warranties

Consistent with the AWSA and the Joint Powers Agreement Act, the Parties to this Agreement warrant and represent the following:

- (a) That they, both individually and collectively, have authority to bind themselves to the terms of this Agreement and to undertake the planning, designing, construction, operation and maintenance of the NM Unit.
- (b) That they are committed to beneficially using the water available to New Mexico pursuant to both the Colorado River Basin Project Act of 1968 and the AWSA.
- (c) That they can undertake the responsibility of planning the NM Unit.
- (d) That, upon request to the Secretary of the Interior, they will have the ability to perform all, or any combination of, the following duties listed in the AWSA:
 - Design the NM Unit
 - Build the NM Unit
 - Operate the NM Unit
 - Maintain the NM Unit
- (e) That they have identified an objective to investigate and/or obtain, through lease, purchase, or other transfer mechanism, the right to operate, manage and/or utilize water resources and infrastructure currently owned by Freeport-McMoRan Inc. (FMI).
- (f) That the construction and operation of the NM Unit (Development of the AWSA Water) is and remains a the highest priority

- (g) That the ISC approves all projects and expenditures of the NM Unit Fund in consultation with the NM CAP Entity.
- (h) That they have identified an objective to create a program whereby applications for project funding from the NM Unit Fund for the planning, design and construction of water utilization alternatives in the Southwest Planning Region of New Mexico may be submitted to, and evaluated and approved by, the New Mexico CAP Entity. Beginning after the issuance of the Record of Decision , which is to be issued by December 31, 2019, the Parties will formulate specific policies and criteria for the evaluation, prioritization and implementation of proposed projects. Once the policies and criteria have been finalized, applications for project funding will be accepted.
- (i) That funds from the New Mexico Unit Fund made available to the New Mexico CAP Entity may be used for the following purposes. The use of all funds or income available through the AWSA or derived from the AWSA, or made available to, the New Mexico CAP Entity from all sources, regardless of where those funds are deposited, shall be used for the planning, design, construction, operation and maintenance, of a NM Unit, or all or any combination of those responsibilities, for development of the AWSA water. Funds from the New Mexico Unit Fund may also be used to investigate and/or obtain, through lease, purchase, or other transfer mechanism, water resources and infrastructure currently owned by FMI and for the operation, management and/or utilization of such water resources and infrastructure upon lease, purchase or other transfer to the New Mexico CAP Entity

- (j) After the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019), and after development of policies and criteria as forth in Paragraph (h) above, funds from the NM Unit Fund may also be used for the planning, design, and construction of other water utilization alternatives to meet water supply demands in the Southwestern Planning Region of New Mexico, and to provide for the planning and development of water utilization projects that will improve the quality of life and encourage economic development in the region in an efficient and cost-effective manner.
- (k) The Parties agree that they may provide financial support to the extent they are able to, in each Party's individual discretion, as necessary in perpetuity to plan, design, construct, operate and maintain the NM Unit, including, without limitation, the issuance of bonds, the levy of taxes, the assessment of membership dues, and the assessment of user fees.
- (l) The Parties agree that this Amendment to the JPA shall not divest the ISC of any authority with regard to the allocations made by the ISC to non-NM Unit water utilization projects in the Region to date.

IV. Joint Powers

- (a) As provided in the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the Parties to this Agreement have and will jointly exercise:
 - (1) The authority and power to execute and implement the NM Unit Agreement pursuant to the AWSA, 118 Stat. at 3482;
 - (2) The authority and power to designate fiscal agents; and

- (3) The authority and power to request, at some point in the future, that the Secretary of the Interior transfer her authority to design, build, operate and maintain the NM Unit to the New Mexico CAP Entity, or all or any combination of those authorities and to carry out those responsibilities; and
 - (4) The authority and power to implement this JPA as amended.
- (b) This Agreement provides a mechanism for the Parties to plan, design, build, operate, and maintain a NM Unit in order to divert, store and beneficially use AWSA water from the Gila River Basin, including the San Francisco River, in New Mexico, and to ultimately provide AWSA water for uses allowed under the CUFA and AWSA.
- (c) This Agreement pertains only to (1) the planning, design, construction, operation and maintenance of a NM Unit, (2) investigating and/or obtaining, through lease, purchase or other transfer mechanism, the operation, management and/or utilization of water resources and infrastructure currently owned by FMI, and (3) the proposed program to allocate funds from the NM Unit Fund, after the issuance of the Record of Decision by the Secretary of the Department of Interior for the proposed NM Unit, (which is to be issued by December 31, 2019), for the planning, design, and construction of other water utilization programs in the Southwest Planning Region of New Mexico, as described in Section III(h).

V. Creation of the New Mexico CAP Entity

- (a) There is hereby created a New Mexico CAP Entity pursuant to the authority granted by Section 2 of the AWSA, 118 Stat. 3478, 3482-83, Section 212 of the AWSA, 118 Stat. 3527 *et seq.*, by Section 2.26A of the CUFA, a document ratified

by passage of the AWSA, and by Chapter 11, Article 1 of the New Mexico Statutes Annotated.

(b) The New Mexico CAP Entity is composed of the Parties listed below. Parties to the New Mexico CAP Entity, except the ISC, must be located entirely within Catron, Hidalgo, Luna, or Grant Counties. Representatives to the New Mexico CAP Entity shall be members of the Parties’ respective governing bodies, or public employees, or appointees who are residents or members in good standing of the respective Parties, appointed in writing by the Parties in the manner selected by each Party for the appointment of its representative as follows:

- | | |
|---|-------------------------------|
| 1. Interstate Stream Commission | One non-voting representative |
| 2. Upper Gila Irrigation Association | One representative |
| 3. Fort West Irrigation Association | One representative |
| 4. Gila Farm Irrigation Association | One representative |
| 5. Gila Hotsprings Irrigation Association | One representative |
| 6. Catron County | One representative |
| 7. Grant County | One representative |
| 8. Luna County | One representative |
| 9. Village of Santa Clara | One representative |
| 10. Hidalgo Soil & Water
Conservation District | One representative |
| 11. Hidalgo County | One representative |
| 12. City of Deming | One representative |
| 13. San Francisco Soil & Water | |

Conservation District	One representative
14. City of Lordsburg	One representative
15. Grant Soil & Water	

Conservation District	One representative
-----------------------	--------------------

- (c) New Parties to this Agreement may be added by a 2/3 majority approval following written request.
- (d) Representatives are appointed to the New Mexico CAP Entity for a 3-year term. A representative may be reappointed to serve on the New Mexico CAP Entity. No representative shall represent more than one Party.
- (e) A representative may not frustrate the conduct of the business of the New Mexico CAP Entity by failing or refusing to attend the meetings or to address the business of the New Mexico CAP Entity.
- (f) The New Mexico CAP Entity must hold its first meeting within thirty (30) days after written approval of this Agreement by the Department of Finance and Administration.
- (g) Each Party is entitled to one vote, except the ISC, who is a non-voting member.
- (h) The Parties may have alternate representatives. Alternates shall be members of the governing body of each Party, or public employees, or appointees who are residents or members in good standing of each Party, appointed in the same manner as the Party's representative. Alternates may attend meetings of the New Mexico CAP Entity along with the designated representative, but shall not vote if the representative is present and able to vote. If a Party's representative is absent or unable to vote, its alternate may vote on behalf of the Party it represents.

- (i) The New Mexico CAP Entity shall meet in compliance with the Open Meetings Act of the State of New Mexico, NMSA 1978, Sections 10-15-1 through 10-15-4.
- (j) At its first meeting, the New Mexico CAP Entity shall select a Chairman, a Vice-Chairman, and a Secretary who shall serve for one (1) year or until their successors are duly elected and qualified. Thereafter, the New Mexico CAP Entity shall adopt bylaws governing the conduct of its business.
- (k) The New Mexico CAP Entity shall not meet unless a quorum of the Parties of the New Mexico CAP Entity is present. A quorum is defined as a majority of the Parties to this Agreement.
- (l) Except as otherwise provided by Paragraphs V(c), V(t) and X(a)(3) of this Agreement, a vote by a quorum of the representatives of the New Mexico CAP Entity shall be required in order for any action or decision by the New Mexico CAP Entity to be valid.
- (m) Upon full execution of this Agreement by all the Parties and by the Department of Finance and Administration, the New Mexico CAP Entity will submit a budget to the ISC for the current fiscal year. The ISC will review this budget and vote on it at its first meeting after the fully-formed New Mexico CAP Entity transmits a budget to the Commission. Thereafter, the Parties agree that, by May 1st of every year, the New Mexico CAP Entity will develop a budget for the upcoming state fiscal year. The state fiscal year begins on July 1st and ends on June 30th of the following calendar year. This annual budget, which will include an operating budget, shall be presented to the Interstate Stream Commission for approval at the first ISC meeting following May 1st of each year. This budget will include

information showing all expenditures from the NM Unit Fund and all expenditures from all other sources. All budgeted expenditures are subject to approval by the ISC. The budget may not be implemented by the New Mexico CAP Entity until it has been approved by the ISC. The budget shall outline all anticipated expenses for the upcoming year, and indicate the anticipated source of funding for each expense. In the event that the New Mexico CAP Entity must amend its budget after the budget has been approved by the ISC, the New Mexico CAP Entity will be required to present its amended budget to the ISC at a meeting of the ISC, and to obtain ISC approval before it can be reimbursed for expenses contained in the amended budget.

- (n) The ISC shall be the fiscal agent (“First Fiscal Agent”) for the New Mexico CAP Entity for all financial transactions related to all money awarded to New Mexico pursuant to Section 107(a) of the AWSA, and for any and all additional monies accruing to the NM Unit Fund from any source or activity undertaken in accordance with the 1968 Colorado River Basin Project Act, the AWSA or the CUFA, including any interest earned on the NM Unit Fund.
- (o) The Parties to the New Mexico CAP Entity acknowledge that, without local financial support, the construction of a NM Unit may not become a reality.
- (p) The Parties to this Agreement shall designate a political subdivision of the State, other than the ISC, who is a signatory to this Agreement as a second fiscal agent (“Second Fiscal Agent”) for the New Mexico CAP Entity. This Second Fiscal Agent shall receive and manage all additional revenues generated by the Second Fiscal Agent or by the New Mexico CAP Entity. As used in this Agreement, the

term additional revenues includes all funds or income made available to the Second Fiscal Agent through the AWSA or generated by the New Mexico CAP Entity as a result of the AWSA, or otherwise derived, directly or indirectly, from the AWSA, including reimbursements from the NM Unit Fund pursuant to an operating budget approved by the ISC. Additional revenues shall include, without limitation, proceeds from issuance of bonds, levy of taxes, assessment of membership dues and assessment of user fees. For purposes of this paragraph, “additional revenues specifically excludes any funds available to the State of New Mexico, through the ISC pursuant to Section 107 of the AWSA and deposited into the NM Unit Fund. This Second Fiscal Agent is subject to the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, and to the State Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14.

- (q) The New Mexico CAP Entity’s Second Fiscal Agent shall account for all additional revenues generated by the Second Fiscal Agent or by the New Mexico CAP Entity in a separate fund (“Second Fund”). The monies in the Second Fund shall be subject to budget approval by the ISC pursuant to Paragraph V(m) above. Additional revenues shall be used exclusively for (1) the planning, design, construction, operation and maintenance of a NM Unit, (2) to investigate and/or obtain, through lease, purchase or other transfer mechanism, the operation, management and/or utilization of water resources and infrastructure currently owned by FMI; or (3) all or any combination of those responsibilities.
- (r) In addition, the ISC shall reimburse the New Mexico CAP Entity’s Second Fiscal Agent for invoiced expenses that have been approved by the ISC pursuant to its

approval of the New Mexico CAP Entity's annual budget and that are directly related to the planning, design, building, operation and maintenance of a NM Unit; provided, however, that ISC reimbursement shall not be required for any invoice or expense that contains, in the discretion of the ISC, procedural defects in the procurement or submission of the expense.

- (s) The ISC shall reimburse the New Mexico CAP Entity's Second Fiscal Agent only until the NM Unit Fund is exhausted. Nothing in this Agreement shall be construed as committing the State of New Mexico, or the ISC, to reimburse any expenses of the New Mexico CAP Entity once the monies of the NM Unit Fund have been exhausted.
- (t) The New Mexico CAP Entity shall have the authority to enter into and execute the NM Unit Agreement with the Secretary of the Interior as required by the AWSA. *See* Pub. L. 108-451, 118 Stat. 3478, 3483, 3527-28. The New Mexico CAP Entity is allowed by the AWSA, and by this Agreement, to request that the Secretary of the Interior transfer to the New Mexico CAP Entity the responsibility to design, build, or operate and maintain the NM Unit, or all or any combination of those responsibilities, provided that the Parties to the New Mexico CAP Entity elect to do so by a vote of 2/3 of the Parties.
- (u) Upon such a request, the Secretary is obligated by the AWSA to transfer the requested responsibilities to the New Mexico CAP Entity, provided that, as set out in the CUFA, the Secretary of the Interior shall not transfer the authority to divert water; and, provided further, that the Secretary of the Interior shall remain

responsible to the parties to the CUFA for the New Mexico CAP Entity's compliance with the terms and conditions of the CUFA.

- (v) The New Mexico CAP Entity shall own and hold title to all portions of the NM Unit constructed pursuant to the NM Unit Agreement. The New Mexico CAP Entity shall be responsible for its share of operations, maintenance, and replacement costs of the NM Unit. In determining payment for CAP water under the NM Unit Agreement, the New Mexico CAP Entity shall be responsible for its share of operations, maintenance and replacement costs for delivery of CAP water in exchange for consumption of AWSA water from the Gila River and its tributaries in New Mexico by the NM Unit. No capital costs attendant to other units or portions of the Central Arizona Project shall be charged to the New Mexico CAP Entity.
- (w) After the NM Unit Agreement has been signed, the New Mexico CAP Entity shall comply with all provisions of the NM Unit Agreement. Except as otherwise limited by this Agreement, the New Mexico CAP Entity shall have the authority to take all actions necessary to comply with the provisions of the NM Unit Agreement and with this JPA, including, but not limited to, the authority to contract through its Fiscal Agents, the authority to assess membership dues among the members of the New Mexico CAP Entity, in accordance with the bylaws to be adopted pursuant to Paragraph V(j) above, and the authority to manage revenues from other sources, including those identified in Paragraph V(o), through its Second Fiscal Agent for purposes determined by the Parties.

(x) The New Mexico CAP Entity shall allocate among its Parties, or manage for the benefit of its Parties, the AWSA water for which it has contracted with the Secretary of the Interior.

(y) The New Mexico CAP Entity shall be an entity that, as required by the CUFA as ratified by the AWSA:

1. Does not have sovereign immunity;
2. Does not have the protection of the 11th Amendment of the Constitution; and
3. Continues to satisfy all those conditions throughout its existence.

However, pursuant to NMSA 1978, Section 11-1-6, all the privileges and immunities from liability, exemptions from laws, ordinances, and rules, and other benefits which apply to the activity of officers, agents or employees of the Parties when performing their respective functions within the territorial limits of their respective public agencies shall apply to the Parties to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

Nothing in this Agreement shall be construed as creating liability on the part of the Parties hereto for the actions or decisions of the New Mexico CAP Entity.

Each Party shall be responsible only for its own acts or omissions to the extent provided under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, and all other applicable laws.

(z) The New Mexico CAP Entity agrees that it shall be subject to the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, and to the State Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14.

(aa) The New Mexico CAP Entity has and may exercise the following authority and powers:

1. Authority and Power to execute and implement the NM Unit Agreement with the Secretary of Interior;
2. Authority and Power to designate a second Fiscal Agent;
3. Authority and Power to request that the Secretary of the Interior transfer her authority to design, build, operate and maintain the NM Unit to the New Mexico CAP Entity; and
4. Authority and power to implement this JPA as amended.

VI. Resolutions

Membership in the New Mexico CAP Entity is conditioned upon participation in this Agreement. Each Party shall provide a resolution to the ISC of its respective governing body identifying its signatory and representing that the body has allowed its signatory to sign this Agreement and that such signature represents that Party's commitment to beneficial use of the AWSA water.

VII. Ownership

Contractual rights or property rights related to the subject matter of this Agreement shall be retained and held in trust by either the First Fiscal Agent or the Second Fiscal Agent as prescribed by the New Mexico CAP Entity for the benefit of the New Mexico CAP Entity until

or unless the New Mexico CAP Entity has become a legislatively-recognized political subdivision of the State.

VIII. Books and Records

- (a) This Agreement requires strict accountability of all receipts and disbursements in accordance with NMSA 1978, Section 11-1-4(D).
- (b) Detailed records of all transactions of the New Mexico CAP Entity shall be kept and maintained by the New Mexico CAP Entity, or its Fiscal Agents, and shall be open for inspection and audit at reasonable times in accordance with all applicable laws.
- (c) Both fiscal agents designated under this Agreement are subject to the Audit Act, NMSA 1978, Sections 12-6-1 through 12-6-14. As the First Fiscal Agent for the New Mexico CAP Entity, the ISC will keep and maintain detailed records of all receipts, disbursements, contracts and all other transactions that the ISC will conduct on behalf of the New Mexico CAP Entity. The Second Fiscal Agent for the New Mexico CAP Entity will keep and maintain detailed records of all receipts, disbursements, contracts and all other transactions that the Second Fiscal Agent will conduct on behalf of the New Mexico CAP Entity.

IX. Construction of this Agreement

Nothing contained herein shall be construed as prohibiting any Party from exercising its power or right to condemn, purchase or otherwise acquire water or water rights on its own behalf, nor shall this Agreement be construed as a limitation on the right of the Parties to deal with water or water rights they own.

X. Termination and Distribution of Assets

(a) This Agreement shall expire upon the earliest of the events described below:

(1) If the New Mexico CAP Entity becomes a legislatively recognized political subdivision of the State, that is to say, a body created by an Act of the New Mexico Legislature that is not an arm of the State of New Mexico; or

(2) If this Agreement is superseded by another agreement;

Provided, however, that unless the reason for termination of this Agreement is that the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, this Agreement shall not be terminated so long as any bonds issued in connection with the AWSA are outstanding, i.e., so long as there has not been full payment or defeasance of such bonds; or

(3) If this Agreement is terminated by a vote of 2/3 of the Parties or in accordance with the provisions of Paragraph X(f) herein, provided that, unless the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, this Agreement shall not be terminated so long as any bonds issued in connection with the AWSA are outstanding.

(b) At the time this Agreement terminates, pursuant to NMSA 1978, Section 11-1-4, any funds remaining in the NM Unit Fund will remain under the control of the ISC for continued disbursement to the New Mexico CAP Entity or to others in accordance with the terms of the AWSA, the CUFA, the NM Unit Fund statute, and any other applicable law. Any remaining unexpended operating budget funds provided by the ISC from the NM Unit Fund will be returned to the NM Unit Fund. If the reason for termination is that the New Mexico CAP Entity has

become a legislatively-authorized political subdivision of the State, then the ISC, upon approval by the Board of Finance and the New Mexico legislature, as necessary, will turn over to the New Mexico CAP Entity title to any assets the ISC may own related to the NM Unit. Title to all NM Unit assets owned by the Second Fiscal Agent for the New Mexico CAP Entity shall pass to the legislatively authorized New Mexico CAP Entity in accordance with all governing laws. If the reason for termination is that the New Mexico CAP Entity has become a legislatively-authorized political subdivision of the State, any bonds that were issued on behalf of the New Mexico CAP Entity or any other debt assumed on behalf of the New Mexico CAP Entity by a Party to this JPA, including but not limited to the New Mexico CAP Entity's Second Fiscal Agent, shall transfer from the debt holder to the legislatively-authorized New Mexico CAP Entity.

- (c) Upon termination of this Agreement that would result in the dissolution of the New Mexico CAP Entity, any funds remaining in the NM Unit Fund will remain under the control of the ISC for disbursement in accordance with the terms of the AWSA, the CUFA, the NM Unit Fund statute and any other applicable law. Any funds held by the Second Fiscal Agent on behalf of the New Mexico CAP Entity shall be refunded to all Parties to this Agreement in proportion to their contributions, except the ISC. Any assets related to the NM Unit owned or held in trust for the New Mexico CAP Entity by the ISC at the time of termination of this Agreement may be disposed of in accordance with all laws and regulations governing the ISC, upon approval by the Interstate Stream Commission and, if

necessary, the New Mexico Board of Finance and the New Mexico legislature.

Any assets owned by the Second Fiscal Agent at the time of termination of this Agreement related to the NM Unit will be disposed of in accordance with all laws and regulations governing the Second Fiscal Agent, and the proceeds of such disposal will be distributed among all Parties to this Agreement in proportion to their contributions, except the ISC.

- (d) In the event of withdrawal by a Party from this Agreement prior to termination of this Agreement, the withdrawing Party shall be obligated to honor all commitments made to the New Mexico CAP Entity before the withdrawing Party's withdrawal. Moreover, the withdrawing Party shall not be entitled to a refund of any amounts paid.
- (e) In the event of dissolution of the New Mexico CAP Entity, the provisions of this Agreement shall govern distribution of assets and funds.
- (f) If membership in the New Mexico CAP Entity falls to three (3) voting Parties and the ISC, the remaining Parties shall be entitled, but not obligated, to terminate this Agreement in a writing signed by all remaining Parties. If there remain only two voting members, or if the ISC is the last remaining Party, this Agreement shall automatically terminate.

XI. Severability

The articles, sections, subsections, paragraphs, sentences, clauses and phrases of this Agreement are severable. If any phrase, clause, sentence, paragraph, section, or article of this Agreement is declared unconstitutional, illegal, invalid or unenforceable by a final judgment or decree of any court of competent jurisdiction, this declaration shall not affect any of the

remaining phrases, clauses, sentences, paragraphs, sections and articles of this Agreement, as if the Agreement had been entered into by the Parties without the part declared unconstitutional, illegal, invalid or unenforceable.

XII. Effective Date

This Agreement shall be effective once it has been executed by signatories for all the Parties hereto, pursuant to official authorization by the Parties, and submitted to, and approved by, the New Mexico Department of Finance and Administration, pursuant to NMSA 1978, Section 11-1-3.

XIII. Amendments

This Agreement may be amended only by a writing signed by duly authorized representatives of each Party hereto and approved by the Department of Finance and Administration.

XIV. Venue and Governing Law

This Agreement shall be interpreted under the laws of the State of New Mexico. Venue for any suit brought upon this Agreement shall lie in the Sixth Judicial District Court in New Mexico.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals by and through their duly authorized officers, agents or representatives, named below who have represented and warranted that they have the full authority to bind their respective bodies to this Agreement.

NEW MEXICO INTERSTATE STREAM COMMISSION

By: _____
Mark Sanchez

Date: _____

UPPER GILA IRRIGATION ASSOCIATION

By: _____
Robert J. Agnew

Date: _____

FORT WEST IRRIGATION ASSOCIATION

By: _____
Esker Mayberry

Date: _____

GILA FARM IRRIGATION ASSOCIATION

By: _____
Wendel Hann

Date: _____

GILA HOTSPRINGS IRRIGATION ASSOCIATION

By: _____
Allen Campbell

Date: _____

CATRON COUNTY

By: _____
County Representative

Date: _____

GRANT COUNTY

By: _____
Brett Kasten

Date: _____

LUNA COUNTY

By: _____
County Representative

Date: _____

VILLAGE OF SANTA CLARA

By: _____
Village Representative

Date: _____

HIDALGO SOIL & WATER CONSERVATION DISTRICT

By: _____
Stan Jones

Date: _____

HIDALGO COUNTY

By: _____
Marianne Stewart

Date: _____

CITY OF DEMING

By: _____
Benny L. Jasso

Date: _____

SAN FRANCISCO SOIL & WATER CONSERVATION DISTRICT

By: _____
Howard Hutchinson

Date: _____

CITY OF LORDSBURG

By: _____
Arthur Clark Smith

Date: _____

Grant Soil & Water Conservation District

By: _____
Tyson Bays

Date: _____

DEPARTMENT OF FINANCE AND ADMINISTRATION

By: _____

Date: _____