



THE BOARD OF TRUSTEES OF THE TOWN OF MESILLA WILL HOLD A REGULAR MEETING ON MONDAY, JUNE 24, 2019 AT 6:00 P.M. IN THE BOARD ROOM OF THE MESILLA TOWNHALL, 2231 AVENIDA DE MESILLA.

- 1. PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL & DETERMINATION OF A QUORUM**
- 3. CHANGES TO THE AGENDA & APPROVAL**
- 4. PUBLIC INPUT** – The public is invited to address the Board for up to 3 minutes.
- 5. CLOSED SESSION** – pursuant to NMSA 1978 Chapter 10-15-1(H)(2): discussion limited to personnel matters regarding the hiring of a Special Events Coordinator. – *Nora L. Barraza, Mayor.*
- 6. *APPROVAL OF CONSENT AGENDA** – The Board will be asked to approve by one motion the following items of recurring or routine business. The Consent Agenda is marked with an asterisk *:
 - A. *BOT Minutes** – Minutes of a Work Session & Regular Meeting of June 10, 2019.
 - B. *PZHAC Case 060908** – 2220 Calle de Parian, submitted by Ryan Romero for “Topaz”; a request for a zoning permit to allow a wall sign and a free-standing sign for a business at this address. Zoned: Historical Commercial (HC).
 - C. *PZHAC Case 060911** – 2149 Calle de Los Huertos, submitted by Gabriel Quintana, a request for a zoning permit to allow the landscaping of a residential property at this address. Zoned: Historical Residential (HR)
- 7. NEW BUSINESS:**
 - A. For Approval: Ordinance 2019-03:** An Ordinance pursuant to NMSA 1978, Section 1-22-3.1 to Opt-In to having the election of the Municipal Officers of the Town of Mesilla in the Regular Local Election. – *Cynthia Stoechner-Hernandez, Clerk/Treasurer.*
 - B. Resolution 2019-10:** A resolution authorizing the execution and delivery of a loan agreement and intercept agreement between the Town of Mesilla and the New Mexico Finance Authority in the amount of \$291,726 for the purchasing of a new firefighting apparatus. – *Kevin Hoban, Fire Chief.*
 - C. Resolution 2019-11:** A resolution authorizing the participation in the execution of an agreement of the Capital Outlay Program administered by New Mexico Department of Transportation (NMDOT) in the amount of \$75,000. – *Rod McGillivray, Public Works Director.*
 - D. For Approval:** The hiring of a Special Events Coordinator. – *Cynthia Stoechner-Hernandez, Clerk/Treasurer.*
 - E. For Discussion:** Partnering with Experience Mesilla for the Summer Music Series – *Russell Hernandez, Salud de Mesilla*
- 8. APPEALS FROM PZHAC:**
 - A. Approval or Disapproval:** Z19-001 – Submitted by Jesus Caro, an application for a zone change from Rural Farm, five acre minimum lot size (RF) to Residential, one acre minimum

lot size (R-1) for a 4.36 acre residential parcel located at the west end of Fresquez /Snow Road (a private easement). (A Public Hearing for this case was held by the PZHAC on April 2, 2019)

9. BOARD OF TRUSTEE COMMITTEE REPORTS

10. BOARD OF TRUSTEE/STAFF COMMENTS

11. ADJOURNMENT

NOTICE:

If you need an accommodation for a disability to enable you to fully participate in the hearing or meeting, please contact us at 524-3262 at least one week prior to the meeting. The Mayor and Trustees request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Board Room to respond to or to conduct a phone conversation. A copy of the agenda packet can be found online at www.mesillanm.gov.

Posted 6/21/19 at the following locations: Town Clerk's Office 2231 Avenida de Mesilla, Public Safety Building 2670 Calle de Parian, Mesilla Community Center 2251 Calle de Santiago, Shorty's Food Mart 2290 Avenida de Mesilla, Ristramn Chile Co., 2531 Avenida de Mesilla and the U.S. Post Office 2253 Calle de Parian.



**BOARD OF TRUSTEES
TOWN OF MESILLA
WORK SESSION
MONDAY, JUNE 10, 2019
5:45 P.M.**

- TRUSTEES:** Nora L. Barraza, Mayor
Stephanie Johnson-Burick, Mayor Pro Tem
Carlos Arzabal, Trustee
Jesus Caro, Trustee
Veronica Garcia, Trustee
- STAFF:** Cynthia Stoechner-Hernandez, Town Clerk/Treasurer
K.C. Alberg, Marshal
Kevin Hoban, Fire Chief
- PUBLIC:** Ruben Contreras Brittany Bloch

A. PLAN REVIEW: PZHAC Case 060848 – Submitted by Ruben Contreras for Brittany Bloch; a request for a zoning permit to construct two commercial buildings on a property at 1901 Calle de Correo. **Zoned: Historical Commercial (HC).**

Mayor Barraza opened the meeting at 5:46 p.m. Mr. Contreras presented the plans to the board demonstrating the Latia connection of the two buildings.

Trustee Caro asked about the sidewalks.

Mr. Contreras stated there will be a 3 ft. sidewalk along Calle de Correo, which will increase in dimensions as it reaches the concrete sidewalk on Avenida de Mesilla.

Mayor Barraza asked about the sidewalk improvements being in the right of way and what the smallest portion is from the property line to the street.

Mr. Contreras responded about 6 ft. to the curb from the property line.

Mayor Barraza asked about the ponding on the property.

1 Mr. Contreras clarified that all drainage will be directed to the ponding area at the back of the
2 property.

3 Mayor Pro-Tem Johnson-Burick stated she had stated at the last meeting that she would like the
4 buildings connected; it will just give a visual effect.

5 Mr. Contreras responded it would not be structurally sound for the lattice to be connected to the
6 buildings because the buildings will settle at different rates.

7 Mayor Pro Tem Johnson-Burick asked how the issue of Long-Term and Short-Term rentals
8 will be addressed.

9 Mayor Barraza responded Air bnb's must be renewed yearly, if they are not staff will follow up
10 on their status. Appropriate matters will be taken to stop Airbnb's from becoming Long-Term
11 rentals or residential home. She directed the applicant to complete the permitting process.

12

13 Mayor Barraza closed Work Session at 6:00 p.m.

14

DRAFT

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3
4 **BOARD OF TRUSTEES**
5 **TOWN OF MESILLA**
6 **REGULAR MEETING**
7 **MONDAY, JUNE 10, 2019**
8 **6:00 P.M.**
9

10
11 **TRUSTEES:** Nora L. Barraza, Mayor
12 Stephanie Johnson-Burick, Mayor Pro Tem
13 Carlos Arzabal, Trustee
14 Jesus Caro, Trustee
15 Veronica Garcia, Trustee
16

17 **STAFF:** Cynthia Stoehner-Hernandez, Town Clerk/Treasurer
18 K.C. Alberg, Marshal
19 Kevin Hoban, Fire Chief
20

21 **PUBLIC:** Ruben Contreras Brittany Bloch
22 Sally Williams Bill Perry
23 John Chavez Dylan Thunhorst
24 Susan Krueger Trina Witter
25 Lindsey Barr Mary H. Ratje
26 Jim Ratje Amanda Askin
27 Morgan Switzer Shannon Cockriel
28 Sean Cockriel Austin Weber
29

30 **1. PLEDGE OF ALLEGIANCE**

31 Mayor Barraza led the Pledge of Allegiance at 6:00 p.m.
32

33 **2. ROLL CALL & DETERMINATION OF A QUORUM**

34 **Roll Call.**

35 **Present:** Mayor Barraza, Mayor Pro Tem Johnson-Burick, Trustee Arzabal, Trustee Caro, Trustee
36 Garcia.
37

38 Mayor Barraza held a Moment of Silence for Ms. Tansy Byrd.
39

40 **3. CHANGES TO THE AGENDA & APPROVAL**

41 **Motion:** To approve agenda, **Moved by Mayor Pro-Tem Johnson-Burick, Seconded by Trustee**
42 **Garcia.**
43

44 **Roll Call Vote:** Motion passed (**summary:** Yes =4).

1 Mayor Pro Tem Johnson-Burick Yes
2 Trustee Arzabal Yes
3 Trustee Caro Yes
4 Trustee Garcia Yes
5

6 **4. PUBLIC INPUT** – The public is invited to address the Board for up to 3 minutes.

7 Mr. Taylor recommended delaying voting on extending the election terms as the ones voting may be
8 doing it to benefit themselves.
9

10 Mr. Perry stated he is appalled that the board is considering extending terms for three trustees without a
11 community vote. This borders on a corrupt governing. He recommended have an election in November
12 and compensating the outgoing trustees till March.
13

14 Mr. Hernandez stated no one from Experience Mesilla was notified regarding approval of a Cooperative
15 Marketing Agreement with the State of New Mexico Tourism Department in cooperation with Experience
16 Mesilla. He stated collaboration should be done collectively across the board.
17

18 **5. *APPROVAL OF CONSENT AGENDA – The Board will be asked to approve by one**
19 **motion the following items of recurring or routine business. The Consent Agenda is**
20 **marked with an asterisk *:**

21 Mayor Barraza removed item 060908 from consent agenda.
22

23 Trustee Arzabal requested placing item C on the consent agenda.
24

25 **Motion:** To approve consent agenda as amended, **Moved by Trustee Arzabal, Seconded by Trustee**
26 **Caro.**
27

28 Mayor Barraza stated Mr. Hernandez notified us at the last meeting that we had received the grant. It was
29 mentioned it would be on this week's agenda for approval. Mr. Hernandez' should have sent out an email
30 blast to get the word out or contacted Ms. Stoechner-Hernandez. She feels we do have a collaborative
31 relationship, but we will try to communicate better.
32

33 Mayor Pro Tem Johnson-Burick reviewed corrections to the minutes.
34

35 **Roll Call Vote:** Motion passed (summary: Yes =4).

36 Mayor Pro Tem Johnson-Burick Yes

37 Trustee Arzabal Yes

38 Trustee Caro Yes

39 Trustee Garcia Yes
40

41 Mr. Cockriel stated he is working on his eagle project and plans on building a 4 ft. marble Grotto to the
42 Mother Mary at the rear of the church store.
43

44 **A. *BOT Minutes** – Minutes of a Work Session on May 20, 2019. *Approved by consent agenda*

45 **B. *BOT Minutes** – Minutes of a Regular Meeting on May 28, 2019. *Approved by consent agenda*

46 **C. *PZHAC Case 060907** – 1930 Calle Pacana, submitted by Maggie Fraga, a request for a zoning
47 permit to install an inground pool at the rear of a dwelling at this address. Zoned: Historical
48 Residential (HR). *Approved by consent agenda*
49

50 a. ***PZHAC Case 060908** – 2415 Calle de Parian, submitted by Robert Reynolds; a request
51 for a zoning permit to allow the construction of a wood frame carport over a brick

1 driveway on the west side of an existing dwelling at this address. Zoned: Historical
2 Residential (HR). *Approved by consent agenda*

3 b. ***PZHAC Case 060909** – 2270 Calle Principal, submitted by Sean Greene-Cockriel for
4 San Albino Church; an application for a zoning permit to allow the installation of a
5 Grotto to the Mother Mary at the rear of the church store at this address. Zoned:
6 Historical Commercial (HC). *Approved by consent agenda*

7
8 c. ***Resolution 2019-09:** A resolution authorizing the Town to Participate in the Local
9 Government Road Fund Program and a Request for match waiver administered by the
10 New Mexico Department of Transportation. *Approved by consent agenda*

11
12 **D. NEW BUSINESS:**

13 **A. For 1st Reading/Public Hearing: Ordinance 2019-03:** An Ordinance pursuant to NMSA
14 1978, Section 1-22-3.1 to Opt-In to having the election of the Municipal Officers of the
15 Town of Mesilla in the Regular Local Election. – *Cynthia Stoechner-Hernandez,*
16 *Clerk/Treasurer.*

17 **Motion:** To close regular meeting and open a public hearing, **Moved by Trustee Arzabal, Seconded by**
18 **Trustee Garcia.**

19
20 **Roll Call Vote:** Motion passed (summary: Yes =4).

21 Mayor Pro Tem Johnson-Burick Yes

22 Trustee Arzabal Yes

23 Trustee Caro Yes

24 Trustee Garcia Yes

25
26 Closed Regular Meeting and opened Public Hearing at 6:28 p.m.

27
28 Ms. Stoechner-Hernandez gave a brief overview of the changes to the Ordinance and the Mesilla Town
29 Code.

30
31 Mayor Barraza stated this is in compliance with recent bills passed in Legislature. All entities in Dona
32 Ana County have opted in with the exception of the Town.

33
34 Ms. Williams stated opting in a positive move. She does not agree extending terms. She elected them for
35 one term; compensation can be done if needed.

36
37 Mr. Schaljo stated agrees that opting in is a great move. The town should have provided two ordinances;
38 one with term extensions and one with shorting the terms so the town could see the options. He feels it
39 should be up to the voting members of the Town of Mesilla to decide how to proceed. Trustees were
40 elected for one, four-year term.

41
42 Ms. Ratje stated she is concerned with residents who are used to voting at a certain time/place and getting
43 them to the polls. She is not sure how the ordinance came about; agrees it should be up to the public.

44
45 Mr. Taylor stated he cautioned them on voting on something that may benefit the trustees.

46
47 **Motion:** To close public hearing and go back into regular meeting, **Moved by Mayor Pro-Tem**
48 **Johnson-Burick, Seconded by Trustee Arzabal.**

49
50 **Roll Call Vote:** Motion passed (summary: Yes =4).

51 Mayor Pro Tem Johnson-Burick Yes

1 Trustee Arzabal Yes
2 Trustee Caro Yes
3 Trustee Garcia Yes
4

5 Closed Public Hearing and Opened Regular Meeting at 6:38 p.m.
6

7 **B. For Discussion:** Mesilla Night at El Paso Chihuahua's stadium – *Nora L. Barraza, Mayor/
8 Austin Weber, Account Executive, El Paso Chihuahuas. (Added 6/7/19)*
9

10 Mr. Weber gave a presentation regarding a Mesilla Night Out at the Ball Park with no charge to the town.
11

12 Trustee Arzabal stated the organization works well with students and is very welcoming.
13

14 Trustee Caro stated this would be good for everyone involved. He is willing to help contact the
15 businesses
16

17 Mayor Pro-Tem Johnson-Burick stated the County has discussed this before; concerned with who is
18 responsible for the legwork.
19

20 Mr. Weber responded he would be the one that would work on the businesses and get them to buy in.
21

22 Mayor Pro-Tem Johnson-Burick asked if there is a minimum amount of tickets that need to be sold in
23 order to do this.
24

25 Mr. Weber responded there is no minimum. He's sure that businesses would want to promote their
26 business and to give back to the community.
27

28 Mayor Barraza stated this will help promote our community.
29

30 Trustee Garcia stated she is willing to contact the businesses.
31

32 **C. For Approval:** A Cooperative Marketing Agreement with the State of New Mexico
33 Tourism Department in cooperation with Experience Mesilla in the amount of \$13,946 to
34 promote and market travel efforts to the Town of Mesilla. – *Cynthia Stoehner-Hernandez,*
35 *Clerk/Treasurer. Approved by consent agenda*
36

37 **7. *STAFF REPORTS:** Community Development Community Programs

38 Finance Department

39 Fire Department

40 Marshal's Department

41 Public Works Department

42 **8. BOARD OF TRUSTEE COMMITTEE REPORTS**

43 Mayor Pro-Tem Johnson-Burick stated that she will be attending the MPO Meeting on Wednesday, June
44 12th.
45

46 Trustee Arzabal stated he will be attending the CEO meeting on June 21st in Deming and the OMA
47 meeting on July 10th.

48 Trustee Garcia stated she will be attending the MPO Meeting on Wednesday, June 12th.

1
2 Mayor Barraza stated she attended a meeting of local realtors. She also attended a NMML meeting in
3 Santa Fe; there was a lot of discussion regarding elections where she asked questions pertinent to the
4 Local Elections Act. Discussions included reasons as to why they extended or shortened terms. Summer
5 Recreation began June 3rd; 30 children are registered. She attended the Military Luncheon on June 4th;
6 the General has been reassigned to Germany. NMDOT Public Meeting was held regarding the University
7 Project on June 5th. They will have another hearing by August/September. Project will begin the end of
8 2022 or beginning of 2023. NMDOT has the funding; the Town of Mesilla will have to come up with
9 some of it. She attended a presentation ceremony with El Paso Electric in which we received a donation
10 of \$4,500 for the 2019 Summer Rec Program. She will attend NALEO next Wednesday in Florida which
11 will be paid by SCCOG. NMML Policy Committee Meeting on June 22nd in Albuquerque which will be
12 attended by some Trustees and staff.

13
14 **9. BOARD OF TRUSTEE/STAFF COMMENTS**

15 Marshal Alberg stated thanked staff for working together on flood control issues with the storm today.

16 Fire Chief Hoban stated Raft the Rio will be June 15th. Public agencies will be working together.

17 Mayor Barraza stated residents have reached out to her to express their appreciation with the Fire
18 Department's professionalism and knowledge.

19 Fire Chief Hoban responded we work in collaboration with the Marshal's Department.

20 Mr. McGillivray gave an update on projects.

21 -McDowell Wastewater project completed

22 -received a match waiver from Local Road Fund

23 -Calle de Parian is at 90% completion

24 -Calle de Picacho assessment needs to be reevaluated

25 -Bowman project going out to bid next week

26
27 Ms. Stoechner-Hernandez stated Summer Music Series started on Friday and will continue to July 26th.

28 Coordinating with Experience Mesilla to provide food. Working on July 4th activities. Interviews for
29 Special Events Coordinator are being done.

30
31 Trustee Caro thanked the residents who spoke up regarding the Election Resolution.

32
33 Mayor Pro Tem Johnson-Burick thanked the Experience Mesilla organization and town staff for working
34 together on the grant to promote the Town of Mesilla. She was surprised to see the dates changed from
35 what was discussed at the May 28th meeting and does not know why it was changed to extend the terms.
36 Thanked the residents for their comments.

37
38 Trustee Garcia thanked Experience Mesilla for their hard work. She agrees with Mayor Pro Tem
39 Johnson-Burick that terms would be shortened and does not know why it was changed. She requested
40 that they see resolutions with extending and shorting terms.

41
42 Trustee Arzabal stated he feels the county is bullying municipalities to opt in by saying they are not
43 going to help us. They must help us; we are a municipality as well. Other municipalities throughout the
44 state have chosen to opt-in; what are the other County Clerks doing? There's more information that
45 needs to be given if we decide to not opt-in.

46
47

1 Mayor Barraza stated she does feel the county has threatened/bullied us into it by saying they will not
2 help us; zero support. The Secretary of State's office says that the County Clerk's office has to assist us
3 in the election. The County Clerk's office did not indicate that we can extend terms; Secretary of State's
4 office said we can extend terms; we have two options. If the ordinance does not pass, we do not have an
5 option to opt-in; election will be in March 2020. She has heard from residents that they do not have a
6 problem with extending the terms. She agrees with Ms. Ratje regarding our residents especially the
7 elderly who are used to voting in March. It is important to get them out to vote. The board voiced they
8 wanted to opt-in; she made the decision to move it to the next election based on the information she was
9 getting. We would not be able to compensate trustees for services that are not rendered. She
10 encouraged anyone to come to her office to discuss these issues. She is grateful for all Experience
11 Mesilla has done to promote the town. She wants to continue the partnership. During the interviews for
12 Special Event Coordinator we are stressing the importance of being a liaison between the town and the
13 businesses. She thanked Ms. Stoechner-Hernandez for all that she has done and El Paso Electric for their
14 donation.

15 Ms. Cockriel thanked the town for their support during her son's project. It is inspiring to see the support
16 firsthand.

17 Marshal Alberg gave a weather update.

18 **10. ADJOURNMENT**

19 **The Town of Mesilla Trustees unanimously agreed to adjourn the meeting. (Summary: Yes-4)**

20
21 **MEETING ADJOURNED AT 7:02 P.M.**

22
23 **APPROVED THIS 24th DAY OF JUNE 2019.**

24
25
26
27
28 _____
29 Nora L. Barraza
30 Mayor

31
32 **ATTEST:**

33
34
35 _____
36 Cynthia Stoechner-Hernandez
37 Town Clerk/Treasurer
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BOT ACTION FORM
SIGN REQUEST
[PZHAC REVIEW]
“Topaz”

STAFF ANALYSIS

Item:

Case 060908 – 2220 Calle de Parian, submitted by Ryan Romero for “Topaz”; a request for a zoning permit to allow a wall sign and a free-standing sign for a business at this address. Zoned: Historical Commercial (HC)

Description of Work to be Done:

The applicant would like to install a 3 feet by 5 feet wall black, white and gold wall sign (see attached diagram) on the wall at the front of the store, and a smaller but similar sign on two sides of a small pedestal that is located in the parking lot at the front of the store (see attached diagram).

Consistency with the Code:

The PZHAC will be consistent with the following Sections of the Sign Code (Chapter 18.65) that specifically apply to this project.

18.65.140 Wall signs.

A. Wall Sign Area.

1. Within the Historical Commercial (H-C) zone, the wall sign area, on any given house or building, shall in no case exceed 10 percent of any wall area including apertures or 15 square feet, whichever is less. Dimensions of painted signs or graphics with no frame shall be determined by measuring the extent of the painted sign or graphic horizontally and vertically and calculating the area

(The proposed wall sign is 15 square feet in area. The sign will not project above the side of the building.)

18.65.160 Freestanding signs.

- A. A freestanding sign (ground-based or post) may be permitted where a business establishment is set back from a street alignment of building facades more than 10 feet. A business establishment thus set back, in addition to the signs permitted upon the building itself, may maintain a freestanding sign of not more than 15 square feet in area including the frame but not the supports, and such sign must relate to the conduct of the business within. If a building has an unencumbered front setback of at least 25 feet, a two-face freestanding sign with a maximum of 15 square feet of area on each face, sign dimensions no greater than six feet in any dimension will be permitted; provided, it relates to the business conducted on the premises.

(Each face of the sign will be less than 15 square feet.)

- C. For freestanding ground-based signs, the wall of a freestanding ground-based sign shall have a maximum square footage of 15 square feet for the Historical Commercial (H-C) zone and 25 square feet for the General Commercial (GC) zone. The height of a ground-based sign will be no more than four feet high. The ground-based signs shall also be required to have building permits for the structure complying with any building code requirements, clear sight triangle requirements or any other applicable codes or regulations.

(The proposed sign meets these requirements.)

- F. All parts of a freestanding sign shall be two feet inside the property line. [Ord. 2006-01 § 1; Ord. 2003-05 § 4; Ord. 94-08; prior code § 11-3-16]

(The pedestal is well within property lines.)

Findings of Fact:

- The PZHAC has jurisdiction to review and approve this request.
- The proposed work consists of installing a 15 square foot wall sign on the building and a two sided freestanding sign at the front of the building at this address.
- The subject property is zoned Historical Commercial (HC)
- The proposed signs will not have negative impacts on the surrounding businesses in the area.
- The proposed signs will be consistent with the Code₄₁

PZHAC ACTION:

The PZHAC determined that the proposed signs would not be out of character with the other signs that have been allowed in the HC zone, and the signs would not be out of character with the area and voted 3 – 0 to recommend APPROVAL of this request to the BOT.

BOT OPTIONS:

1. Approve the application as recommended by the PZHAC.
2. Approve the application with conditions.
3. Reject the application.

BOT ACTION:

PHOTO OF THE STRUCTURE SHOWING SIGN LOCATIONS



Doña Ana County, NM

General Reference Maps

2014 Aerial | Addresses | County Address Points

Select Search

Maps

Legend

Map Themes

Parcels
UDC Zoning
Roads and Transportation
NM House Districts
NM Senate Districts
County Commission Districts
City Council Districts
Median Household Income
General Land Ownership

Account Number: [R0401186](#)
Parcel Number: 4006137212471
Owner: T R FRIETZE LLC
Mail Address: PO BOX 358
Subdivision: FRIETZE TRACTS (BK 19 PG 123 - 9815662)
Property Address: CALLE DE PARIAN
Acres: 0



Safety Line



Hair & Makeup Studio

575-520-3889

<https://www.schedulicity.com/scheduling/HBREMV>



OFFICIAL USE ONLY:

Case # 060908

Fee \$ 50.00

CASE NO. 060908 ZONE: HC APPLICATION DATE: 6/10/19

Topaz
Business Name Business Telephone Number 575-520-3889

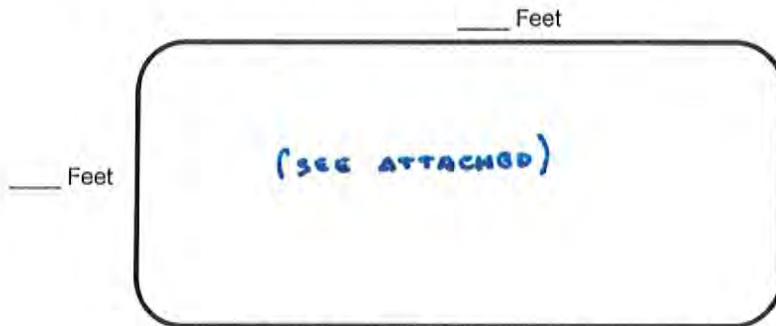
2020 calle de parian
Business Address City State Zip Code NM 88005

Ryan Romero
Applicant Name Applicant Telephone/Cell Number 575-214-4114

1776 Vista montana las Cruces
Mailing Address City State Zip Code NM 88005

Description of sign: banner with phone number, salon name, and web site logo top center

Please include dimensions, lettering, shape, material, texture, colors, and/or finish to be used on the diagram below.



Colors: white - black - amber

FOR OFFICIAL USE ONLY

- PZHAC Administrative Approval
- Approved Date: _____
- Disapproved Date: _____
- Approved with conditions
- BOT Approved Date: _____
- Disapproved Date: _____
- Approved with Conditions

CONDITIONS: _____

PERMIT ISSUED BY: _____ ISSUE DATE: _____

BOT ACTION FORM
BUILDING PERMIT 060902
[PZHAC REVIEW – 5/20/2019]
STAFF ANALYSIS

Item:

Case 060911 – 2149 Calle de Los Huertos, submitted by Gabriel Quintana, a request for a zoning permit to allow the landscaping of a residential property at this address. Zoned: Historical Residential (HR)

Staff Analysis:

The applicant would like to install landscaping around the dwelling at this address (see attached landscaping plan). The plants will be native to the area and the property will be xeriscaped to provide for a water saving landscape. The applicant just recently purchased the property and has removed most of the previous landscaping, which consisted mostly of weeds. According to the applicant, the new landscaping will enhance the appearance of the property. (Several citations had been issued to the previous owner of the property due to the unkempt condition of the property at the time.) Because the new landscaping will affect the appearance of the property, a permit is required by the Code.

Estimated Cost: @ \$20,722.00

Consistency with the Code:

The PZHAC will need to determine that the landscaping, when finished, will be consistent with the other properties in the HR zoning district. Additionally, the request appears to meet all other development and application requirements of the Code.

The PZHAC will also need to determine that the request, as submitted, is consistent with the all other sections of the **Building and Zoning Codes** that may be applied to this project.

Findings:

- The PZHAC has jurisdiction to review and approve this request.
- The proposed work consists of landscaping a residential property at this address.
- The PZHAC has determined that the proposed awning will meet all applicable Code requirements.

PZHAC ACTION:

The PZHAC determined that the proposed landscaping would not be out of character with the other properties in the HR zone and voted 3 – 0 to recommend APPROVAL of this request to the BOT.

BOT OPTIONS:

1. Approve the application as recommended by the PZHAC.
2. Approve the application with conditions.
3. Reject the application.

BOT ACTION:

PHOTO OF PROPERTY



Doña Ana County, NM

General Reference Maps

2014 Aerial | Addresses | County Address Points

Select Search

Maps

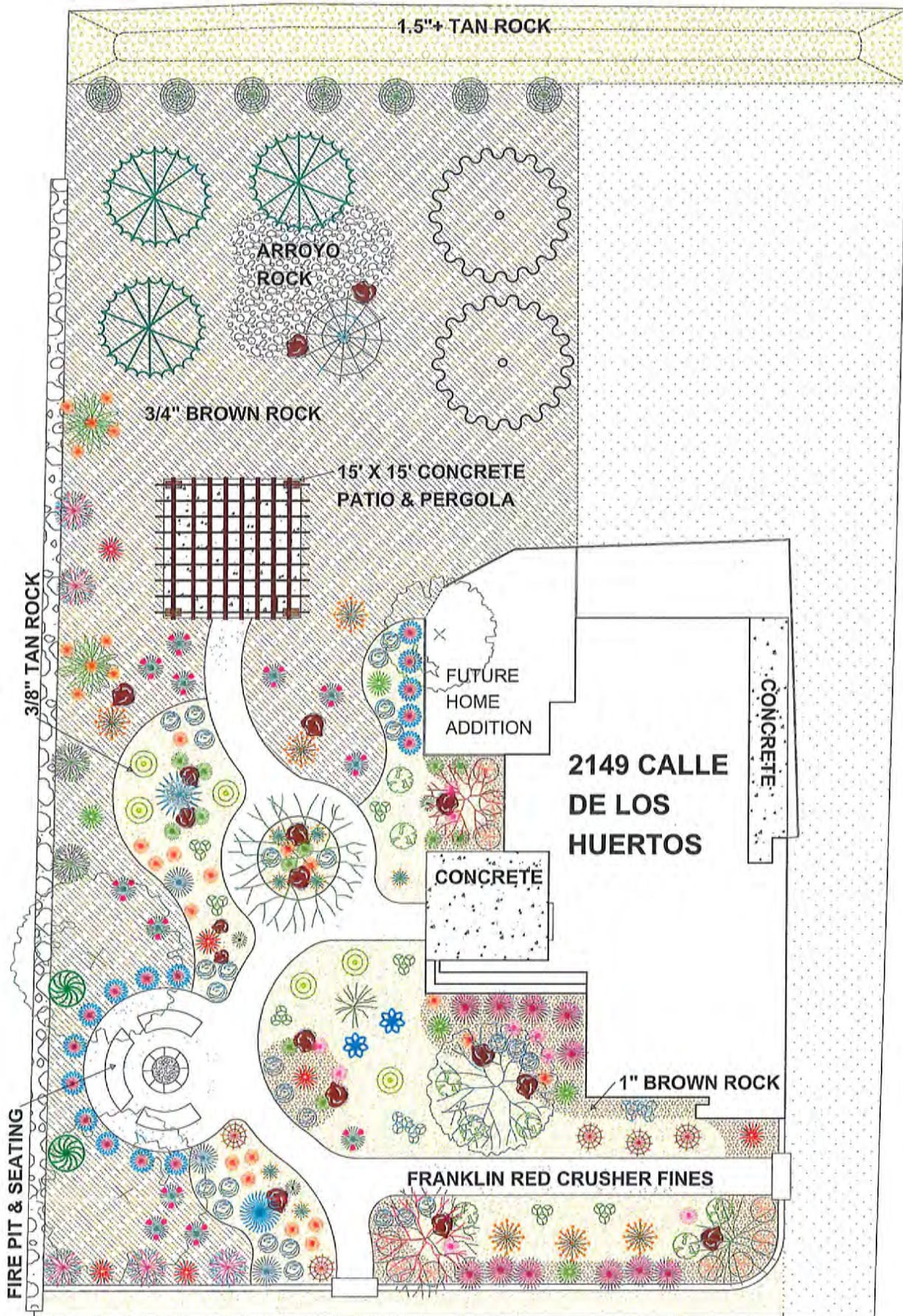
Legend

Map Themes

Parcels
UDC Zoning
Roads and Transportation
NM House Districts
NM Senate Districts
County Commission Districts
City Council Districts
Median Household Income
General Land Ownership

Account Number: [R0401146](#)
Parcel Number: 4006137063464
Owner: QUINTANA GABRIEL
Mail Address: 33 S GULFSTREAM AVE #802
Subdivision: USRS TR 11A-155A , 11A-155B1 , 11A-155B2 , ETC. REPLAT NO 1 (BK 18 PG 603 - 9628891)
Property Address: 2149 CALLE DE HUERTOS
Acres: 0





**TOWN OF MESILLA
ZONING APPROVAL**
PERMISSION TO CONDUCT WORK
OR
OBTAIN A COMMERCIAL/RESIDENTIAL BUILDING PERMIT

OFFICIAL USE ONLY:
Case # 060911
Fee \$ 260.00

2231 Avenida de Mesilla, P.O. Box 10, Mesilla, NM 88046 (575) 524-3262 ext. 104

CASE NO. 060911 ZONE: HR CODE: M1 APPLICATION DATE: 6/6/19

GABRIEL QUINTANA 941-539-5709
Name of Applicant/Owner Applicant's Telephone Number

200 DESERT PASS ST. #638 EL PASO TEXAS 79912
Applicant's/Owner's Mailing Address City State Zip Code

GABESON@COMCAST.NET
Applicant's/Owner's E-mail Address

GREEN GUYS LANDSCAPING INC 5638 LASSITER RD. LAS CRUCES, NM 88001
Contractor's Name & Address (If none, indicate Self)

575-993-6241 #84-1704067 NMDOL #002433520120427
Contractor's Telephone Number Contractor's Tax ID Number Contractor's License Number

Address of Proposed Work: 2149 CALLE DE LOS HUERTOS MESILLA, NM 88046

Description of Proposed Work: ADDING PLANTS, TREES, SHRUBS, IRRIGATION SYSTEM, ROCK AND WEED BARRIER, CONCRETE LANDING AT BACK DOOR OF HOUSE. OUTDOOR SEATING AREA and FIRE PIT. PAVER PATIO PERGOLA AREA.

\$ 20,722.00 [Signature] 6-6-19
Estimated Cost Signature of Applicant Date

Signature of property owner if applicant is not the property owner: _____

With the exception of administrative approvals, all permit requests must undergo a review process from staff, PZHAC and BOT before issuance of a building permit. Recorded proof of ownership with legal description of property (deed or current tax bill) along with verification of legally subdivided status of the property are required. **Plan sheets are to be no larger than 11 x 17 inches.**

FOR OFFICIAL USE ONLY

PZHAC Administrative Approval **BOT** Approved Date: _____
 Approved Date: _____ Disapproved Date: _____
 Disapproved Date: _____ Approved with Conditions
 Approved with conditions

FIRE INSPECTION/APPROVAL REQUIRED: ___ YES ___ NO ___ SEE CONDITIONS

CID PERMIT/INSPECTION REQUIRED: ___ YES ___ NO ___ SEE CONDITIONS

CONDITIONS: _____

PERMISSION ISSUED/DENIED BY: _____ ISSUE DATE: _____

This Application will include the following, if checked:

1. ___ Plot plan with legal description to show existing structures, adjoining streets, driveway(s), improvements & setbacks. Verification shall show that the lot was legally subdivided through the Town of Mesilla or that the lot has been in existence prior to February 1972.
2. ___ Site Plan with dimensions and details.
3. ___ Proof of legal access to the property.
4. ___ Drainage plan.
5. ___ Architectural style and color scheme – diagrams or elevations (Historical and commercial zones only).
6. ___ Proof of sewer service or a copy of septic tank permit; proof of water service (well permit or statement from the Public Utility providing water services).
7. ___ Other information as necessary or required by the City Code or Community Development:

1 **TOWN OF MESILLA**

2 **Ordinance 2019-03**

3 **AN ORDINANCE PURSUANT TO NMSA 1978, SECTION 1-22-3.1 TO OPT-IN TO**
4 **HAVING THE ELECTION OF THE MUNICIPAL OFFICERS OF THE TOWN OF**
5 **MESILLA IN THE REGULAR LOCAL ELECTION**

6 BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MESILLA, DONA
7 ANA COUNTY, NEW MEXICO, THAT:

8 **Section 1: MUNICIPAL OFFICERS TO BE ELECTED AT REGULAR LOCAL**
9 **ELECTION**

10 Pursuant to Section 1-22-3.1 NMSA 1978, the Town of Mesilla opts-in to the election of its
11 municipal officers in the Regular Local Election.

12 The terms of office for the current municipal office holders shall be adjusted so that:

13 (A) Municipal officers elected or appointed to a term ending in 2020 shall serve until
14 December 31, 2021. The new term of the position shall be elected at the regular local
15 election in November 2021, and the new term shall commence January 1, 2022.

16 (B) Municipal officers elected or appointed to a term ending in 2022 shall serve until
17 December 31, 2023. The new term of the position shall be elected at the regular local
18 election in November 2023, and the new term shall commence January 1, 2024; and

19 Following approval of this ordinance, the Municipal Clerk shall file a copy of this ordinance with
20 the Secretary of State no later than June 30, 2019.

21 **Section 2. REVISIONS TO MESILLA MUNICIPAL CODE IN ACCORDANCE WITH**
22 **THE NEW LOCAL ELECTION ACT.**

23
24 **2.15.060 Board of trustees – Powers and duties – Election of mayor pro tem.**

25 A. The board of trustees shall:

- 26
27 1. Elect one of its members to act as mayor pro tem in the absence of the mayor, at the
28 second meeting ~~in March~~ after an election to serve a one-year term;
29

30 **Section 3. SEVERABILITY**

31 Should any section, clause or provision of this ordinance, for any reason, be held invalid or
32 unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision
33 shall not affect any of the remaining provision of this ordinance.
34

35 **Section 4. REPEALER**

36 All ordinances or resolutions, or part therefore, inconsistent with this ordinance are hereby
37 repealed to the extent only of such inconsistency. This repealer shall not be construed to revive
38 any ordinance or resolution.
39

1 **Section 5. EFFECTIVE DATE**

2 This ordinance shall be in full force and effect, five (5) days after this approval, adoption and
3 publication as provided by law.

4
5

6 PASSED, ADOPTED AND APPROVED this 24th day of June 2019.

7
8

Mayor
Town of Mesilla

9
10
11

12 ATTEST:

13

14 By: _____
15 Town Clerk/Treasurer

16
17

18 SEAL

ROLL CALL VOTE:

19
20
21
22
23

- _____ MAYOR BARRAZA
- _____ MAYOR PRO-TEM JOHNSON-BURICK
- _____ TRUSTEE CARO
- _____ TRUSTEE GARCIA
- _____ TRUSTEE ARZABAL



**NOTICE OF PUBLIC HEARING & INTENT TO RECOMMEND ADOPTION
OF ORDINANCE 2019-03: AN ORDINANCE PURSUANT TO NMSA 1978, SECTION 1-
22-3.1 TO OPT-IN TO HAVING THE ELECTION OF THE MUNICIPAL OFFICERS
OF THE TOWN OF MESILLA IN THE REGULAR LOCAL ELECTION**

The Board of Trustees (BOT) will hold a public hearing on **Monday, June 10, 2019 at 6:00 p.m.** in the board room of the Mesilla Town Hall, 2231 Avenida de Mesilla. The purpose of the hearing was to take public comments on the proposed ordinance 2019-03 adopting an ordinance to opt-in to having the Town's election with the regular local election (November of odd numbered years).

As part of their regularly scheduled meeting on **Monday, June 24, 2019 at 6:00 p.m.**, the BOT will consider recommending the adoption of ordinance 2019-03 adopting an ordinance to opt-in to having the Town's election with the regular local election (November of odd numbered years). Copies of the proposed ordinance change can be found on the Town of Mesilla website www.mesillanm.gov or by calling (575) 524-3262.

Posted on 5/28/19 on the following locations: Town Clerk's Office 2231 Avenida de Mesilla, Public Safety Building 2670 Calle de Parian, Mesilla Community Center 2251 Calle de Santiago, Shorty's Food Mart 2290 Avenida de Mesilla, Ristramn Chile Co., 2531 Avenida de Mesilla and the U.S. Post Office 2253 Calle de Parian.

STATE OF NEW MEXICO
TOWN OF MESILLA
DOÑA ANA COUNTY

The Board of Trustees (the “Governing Body”) of the Town of Mesilla, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body at Town Hall, 2231 Avenida de Mesilla, Las Cruces, New Mexico 88005, being the meeting place of the Governing Body for the regular meeting held on June 24, 2019, at the hour of 6:00 p.m. Upon roll call, the following members were found to be present:

Present: _____

Absent: _____

Also Present: _____

Thereupon, there was officially filed with the Town Clerk/Treasurer a copy of a proposed resolution in final form.

TOWN OF MESILLA, NEW MEXICO
RESOLUTION NO. 2019-10

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE TOWN OF MESILLA, NEW MEXICO (THE “GOVERNMENTAL UNIT”) AND THE NEW MEXICO FINANCE AUTHORITY (THE “FINANCE AUTHORITY”), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF \$291,726 TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF PURCHASING A NEW FIREFIGHTING APPARATUS FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE; AND PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 59A-53-7, NMSA 1978; PROVIDING FOR THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; SETTING THE MAXIMUM INTEREST RATE OF THE LOAN; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Resolution unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Project; and

WHEREAS, the Governing Body has determined pursuant to the Act that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, the Pledged Revenues have not been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the full faith and credit of the Governmental Unit or the State; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to the Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than the Pledged Revenues, no tax revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; and

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

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Resolution to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF MESILLA, NEW MEXICO:

Section 1. Definitions. As used in this Resolution, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the general laws of the State, Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, Sections 59A-53-1 through 59A-53-19, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Resolution.

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

“Authorized Officers” means the Mayor, Mayor Pro Tem and Town Clerk/Treasurer.

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

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

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

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

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

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

“Governing Body” means the Board of Trustees of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the Town of Mesilla, New Mexico.

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

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

“Intercept Agreement” means the Intercept Agreement, dated the Closing Date, between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

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

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

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

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

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

“Pledged Revenues” means the State Fire Protection Fund revenues distributed to the Governmental Unit, which is utilizing the Project and benefiting from the Loan Agreement, which distribution is made periodically by the State Treasurer pursuant to Section 59A-53-7, NMSA 1978, as amended, in the amount certified by the State Fire Marshal or the New Mexico Public Regulation Commission.

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

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

“Project” means the project described in Exhibit “A” to the Loan Agreement.

“Resolution” means this Resolution No. 2019-10 adopted by the Governing Body on June 24, 2019, approving the Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement as shown on the Term Sheet, as supplemented and amended from time to time.

“State” means the State of New Mexico.

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

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

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and the Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

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

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from the Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$291,726 plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the acquisition of the Project; (ii) pay the Processing Fee; and (iii) make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Loan shall be in an original aggregate principal amount of \$291,726, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on November 1 and May 1 of each year, beginning on November 1, 2020, at the rates designated in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement, as presented at the meeting of the Governing Body at which this Resolution was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement, with such changes, insertions and omissions that are consistent with this Resolution as may be approved by such individual Authorized Officers, and the Town Clerk/Treasurer is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the

Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Resolution and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Resolution or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Resolution, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

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

A. Program Account, Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held by the Finance Authority and to the Program Account, to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account; and (ii) the payment of the Processing Fee to the Finance Authority, all as set forth in Exhibit "A" to the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account and Finance Authority Debt Service Account and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay the principal and interest due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service Account totals a sum at least equal to the entire aggregate amount to become due as to principal, interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged to, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Resolution. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution, the Loan Agreement and Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Resolution set out in Section 17 of this Resolution (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Resolution. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Resolution may be supplemented or amended by resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Resolution. This Resolution may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 15. Repealer Clause. All bylaws, orders, resolutions, and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and Town Clerk/Treasurer of the Governmental Unit, and the title and general summary of the subject matter contained in this Resolution (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Resolution shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Resolution shall be published in substantially the following form:

(Form of Summary of Resolution for Publication)

Town of Mesilla, New Mexico
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. 2019-10, duly adopted and approved by the Governing Body of the Town of Mesilla, New Mexico, on June 24, 2019. A complete copy of the Resolution is available for public inspection during the normal and regular business hours of the Town Clerk/Treasurer, 2231 Avenida de Mesilla, Las Cruces, New Mexico 88005.

The title of the Resolution is:

TOWN OF MESILLA, NEW MEXICO
RESOLUTION NO. 2019-10

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE TOWN OF MESILLA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF \$291,726 TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF PURCHASING A NEW FIREFIGHTING APPARATUS FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE; AND PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 59A-53-7, NMSA 1978; PROVIDING FOR THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; SETTING THE MAXIMUM INTEREST RATE OF THE LOAN; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS AUGUST 2, 2019.

TOWN OF MESILLA, NEW MEXICO

By _____
Nora L. Barraza, Mayor

[SEAL]

ATTEST:

By _____
Cynthia Stohner-Hernandez, Town Clerk/Treasurer

Trustee _____ then moved adoption of the foregoing Resolution, duly seconded by Trustee _____.

The motion to adopt said Resolution, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: _____

Those Voting Nay: _____

Those Absent: _____

_____ () members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Resolution adopted, whereupon the Mayor and the Town Clerk/Treasurer signed the Resolution upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Resolution, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

TOWN OF MESILLA, NEW MEXICO

By _____
Nora L. Barraza, Mayor

[SEAL]

ATTEST:

By _____
Cynthia Stoechner-Hernandez, Town Clerk/Treasurer

EXHIBIT "A"

Meeting Agenda
of the June 24, 2019
Town of Mesilla, New Mexico Meeting

(See attached)

STATE OF NEW MEXICO
TOWN OF MESILLA
DOÑA ANA COUNTY

I, Cynthia Stoechner-Hernandez, the duly qualified and acting Town Clerk/Treasurer of the Town of Mesilla, New Mexico (the “Governmental Unit”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of Trustees of the Town of Mesilla, New Mexico (the “Governing Body”), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at 2231 Avenida de Mesilla, Las Cruces, New Mexico 88005, on June 24, 2019, at the hour of 6:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governmental Unit’s open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of June, 2019.

TOWN OF MESILLA, NEW MEXICO

By _____
Cynthia Stoechner-Hernandez, Town Clerk/Treasurer

[SEAL]

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5. Expenditure Expectations. The Governmental Unit expects to incur a substantial binding obligation within six (6) months of the date hereof with regard to the Project, which obligation involves the expenditure of no less than five percent (5%) of the Proceeds. The Governmental Unit reasonably expects that the \$289,538 of Proceeds deposited into the Governmental Unit's Program Account in the Program Fund together with other legally available funds and anticipated earnings from the investment of such Proceeds until they are spent, are expected to be expended within three (3) years of the date hereof.

The estimated total costs of the Project will not be less than \$289,538 plus investment earnings thereon during the acquisition period.

Proceeds in the amount of \$2,187.95 will be deducted from the Proceeds and paid directly to the Finance Authority as the Processing Fee for the costs of originating and servicing the Loan.

Proceeds in the amount of \$0.05 will be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 of the Loan Agreement.

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

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

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

9. General Tax Covenant. The Governmental Unit has covenanted in the Loan Agreement that no use will be made of the Proceeds, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148(b)) of the Loan Agreement, which use, if it had been reasonably expected on the date hereof, would have caused the Loan Agreement to be classified as an "arbitrage bond" within

the meaning of Section 148 of the Code. The Governmental Unit has further obligated itself in the Loan Agreement to comply throughout the term of the Loan Agreement with the requirements of Sections 103 and 141 through 150 of the Code and regulations proposed or promulgated with respect thereto. Pursuant to the Loan Agreement, the Governmental Unit shall be liable for any rebatable arbitrage payable pursuant to Section 103 and 141 through 150 of the Code and regulations proposed or promulgated with respect thereto.

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

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

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

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

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

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

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

17. Economic Life of Project. The weighted average maturity of 8.817 years of the Loan Agreement does not exceed 120% of the reasonably expected economic life of the Project, which is at least _____ () years.

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

indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e).

19. Rebate Exception. The Governmental Unit is a governmental unit with general taxing powers, no part of the Loan Agreement is a private activity bond, ninety-five percent (95%) or more of the proceeds are to be used for local governmental activities of the Governmental Unit and, the aggregate face amount of all tax-exempt obligations issued by the Governmental Unit during the current calendar year is not reasonably expected to exceed \$5,000,000. There are no subordinate entities of the Governmental Unit which are authorized to issue tax-exempt obligations. If the Governmental Unit fails to satisfy all of the provisions of this paragraph 19 for any reason, as provided in the Loan Agreement and consistent with the covenants of the Governmental Unit contained therein, any rebate owed to the United States Treasury will be paid in the amounts and at the times provided in Section 148 of the Code.

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

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

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

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

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

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

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

[Signature page follows]

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

Dated: August 2, 2019

TOWN OF MESILLA, NEW MEXICO

[SEAL]

By _____
Nora L. Barraza, Mayor

By _____
Cynthia Stoechner-Hernandez, Town
Clerk/Treasurer

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EXHIBIT “B”

NEW MEXICO FINANCE AUTHORITY TAX REPRESENTATIONS CERTIFICATE

The undersigned hereby certifies as follows with respect to the \$291,726 Loan Agreement dated August 2, 2019 (the “Loan”) from the New Mexico Finance Authority (the “Finance Authority”) to the Town of Mesilla, New Mexico (the “Governmental Unit”);

1. The Finance Authority is making the Loan for its own account (and not on behalf of another) in the principal amount of \$291,726, without accrued interest. The Finance Authority is not acting as an Underwriter with respect to the Loan. The Finance Authority has no present intention to sell, reoffer, or otherwise dispose of the Loan (or any portion of the Loan or any interest in the Loan). The Finance Authority has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Loan and the Finance Authority has not agreed with the Governmental Unit pursuant to a written agreement to sell the Loan to persons other than the Finance Authority, therefore the “issue price” of the Loan is \$291,726.

2. The Arbitrage Yield on the Loan, calculated in accordance with the applicable U.S. Treasury Regulations from interest to be paid on the Loan, is 1.997139%.

3. The Weighted Average Maturity of the Loan, calculated in accordance with the applicable U.S. Treasury Regulations, is 8.817 years.

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

Dated this August 2, 2019.

NEW MEXICO FINANCE AUTHORITY

By _____
John Gasparich, Interim Chief Executive Officer

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WITNESS our hands this August 2, 2019.

TOWN OF MESILLA, NEW MEXICO

[SEAL]

By _____
Nora L. Barraza, Mayor

By _____
Cynthia Stoechner-Hernandez, Town
Clerk/Treasurer

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

NEW MEXICO FINANCE AUTHORITY

By _____
John Gasparich, Interim Chief Executive Officer

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\$291,726
TOWN OF MESILLA, NEW MEXICO
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO)
DOÑA ANA COUNTY) ss. GENERAL AND NO LITIGATION
TOWN OF MESILLA) CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly elected and chosen, Mayor, Town Clerk/Treasurer and Attorney for the Town of Mesilla, New Mexico (the “Governmental Unit”) in Doña Ana County, and the State of New Mexico (the “State”) (provided, that the Attorney for the Governmental Unit is certifying only as to Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 20, 21, 22, 24 and 25 hereof):

Capitalized terms used in this Certificate have the same meaning as defined in Governmental Unit Resolution No. 2019-10 adopted on June 24, 2019 (the “Resolution”) unless otherwise defined in this Certificate or the context requires otherwise.

1. The Governmental Unit is a political subdivision of the State and is duly organized and validly existing under and pursuant to the laws of the State, its full name being “Town of Mesilla.”
2. The Governmental Unit was incorporated in the year 1958.
3. From at least April 11, 2019 (except as otherwise noted), to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers of the Governmental Unit:

Mayor:	Nora L. Barraza
Mayor Pro-Tem:	Stephanie Johnson-Burick
Trustees:	Jesus Caro Veronica Garcia Carlos Arzabal
Attorney:	Joseph Cervantes, Esq.
Clerk/Treasurer:	Cynthia Stoechner-Hernandez

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

5. There is no reason within our knowledge, after due inquiry with respect thereto, why the Governmental Unit may not enter into the Loan Agreement and the Intercept Agreement

with the New Mexico Finance Authority (the “Finance Authority”), as authorized by the Resolution.

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

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

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

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

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

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

11. None of the following does or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under any law, court decree or order, governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound:

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

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

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

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

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

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

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

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

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

sale or lease payments, loan repayments or other amounts received by the Governmental Unit from private entities.

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

20. Regular meetings of the Governing Body have been held at 2231 Avenida de Mesilla, Las Cruces, New Mexico 88005, the principal meeting place of the Governing Body.

21. The Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Governing Body in connection with the Loan Agreement. Open Meetings Act Resolution No. 2019-02, as adopted and approved by the Governing Body on March 11, 2019, establishes notice standards as required by Sections 10-15-1 through 10-15-4, NMSA 1978. Open Meetings Act Resolution No. 2019-02 has not been amended or repealed. All action of the Governing Body with respect to the Loan Agreement, the Intercept Agreement and the Resolution was taken at meetings held in compliance with Open Meetings Act Resolution No. 2019-02.

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

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

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

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

26. The Governmental Unit understands that Sutin, Thayer & Browne A Professional Corporation represents the Finance Authority in this Loan and the Governmental Unit has had the opportunity to consult other counsel in connection with the Loan.

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

28. This Certificate may be executed in counterparts.

[Signature page follows]

WITNESS our hands and the seal of the Governmental Unit this 2nd day of August, 2019.

TOWN OF MESILLA, NEW MEXICO

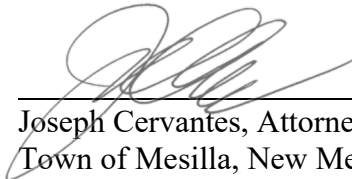
By _____
Nora L. Barraza, Mayor

By _____
Cynthia Stoechner-Hernandez, Town
Clerk/Treasurer

[SEAL]

APPROVED:

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



Joseph Cervantes, Attorney for the
Town of Mesilla, New Mexico

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INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into August 2, 2019, by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the “State”) under the laws of the State and the TOWN OF MESILLA, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the “Governmental Unit”).

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the acquisition of a new firefighting apparatus for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended (collectively, the “Act”), the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the “Loan Agreement”); and

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

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

WHEREAS, the Governmental Unit desires to borrow \$291,726 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 59A-53-7, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of State Fire Protection funds (the “Pledged Revenues”) from the State Treasurer (the “Distributing State Agency”) be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

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

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of \$291,726 to finance the acquisition of the Project. Pursuant to the Loan Agreement and this Intercept Agreement, the Loan and all Loan Agreement Payments on the Loan made by or on behalf of the Governmental Unit shall be collected by the Finance Authority and remitted to the Trustee. All payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule"), or shall be made from special reserve funds of the Finance Authority (as determined by the Finance Authority, and subject to repayment from the Pledged Revenues).

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from periodic distributions of the Pledged Revenues pursuant to Section 59A-53-7, NMSA 1978, as amended, or from special reserve funds of the Finance Authority (as determined by the Finance Authority, and subject to repayment from the Pledged Revenues) to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

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

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from

issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Resolution No. 2019-10, passed and adopted on June 24, 2019, by the Governing Body of the Governmental Unit, which Resolution is in full force and effect on the date hereof.

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

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

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

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

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the periodic distribution of the Pledged Revenues that is to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit distributed in the Fiscal Year ending June 30, 2021.

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

[Remainder of page left intentionally blank]

[Signature page follows]

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

NEW MEXICO FINANCE AUTHORITY

By _____
John Gasparich, Interim Chief Executive Officer

TOWN OF MESILLA, NEW MEXICO

By _____
Nora L. Barraza, Mayor

(SEAL)

Attest:

By _____
Cynthia Stoechner-Hernandez, Town Clerk/Treasurer

Acknowledged:

By _____
State Treasurer, Tim Eichenberg

By _____
State Fire Marshal, Don Shainin

Date _____

Date _____

EXHIBIT "A"

INTERCEPT SCHEDULE
TOWN OF MESILLA, NEW MEXICO

Fiscal Year Ending June 30	Pledged Revenues	Annual Amount
2021	The distribution of State Fire Protection Revenues to the Town of Mesilla, New Mexico pursuant to Section 59A-53-7, NMSA 1978, which distributions are made periodically by the State Treasurer	\$18,106.07
2022		\$18,107.58
2023		\$18,107.56
2024		\$18,016.10
2025		\$30,109.04
2026		\$30,109.58
2027		\$30,108.90
2028		\$30,109.62
2029		\$30,109.74
2030		\$30,108.84
2031		\$30,109.30
2032		\$30,109.22
2033		\$30,108.82

\$291,726

LOAN AGREEMENT

dated

August 2, 2019

by and between

NEW MEXICO FINANCE AUTHORITY

and the

TOWN OF MESILLA, NEW MEXICO

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

LOAN AGREEMENT

THIS LOAN AGREEMENT dated August 2, 2019, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”), and the TOWN OF MESILLA, NEW MEXICO (the “Governmental Unit”), a political subdivision duly organized and existing under the laws of the State of New Mexico (the “State”).

WITNESSETH:

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

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

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

WHEREAS, the Governing Body of the Governmental Unit, has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of purchasing a new firefighting apparatus as more fully described on the Term Sheet attached hereto as Exhibit “A”; and

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

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

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

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

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

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

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

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

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

ARTICLE I DEFINITIONS

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

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12 and Sections 59A-53-1 through 59A-53-19, NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Resolution.

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

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

“Authorized Officers” means, in the case of the Governmental Unit, Mayor, Mayor Pro Tem and Town Clerk/Treasurer and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

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

“Bond Counsel” means nationally recognized bond counsel experienced in matters of municipal law satisfactory to the Trustee and listed in the list of municipal bond attorneys, as

published semi-annually by The Bond Buyer's Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

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

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

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

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

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

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

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

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

“Governing Body” means the duly organized Board of Trustees of the Governmental Unit and any successor governing body of the Governmental Unit.

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

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

of the Governmental Unit, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit.

“Intercept Agreement” means the Intercept Agreement, dated August 2, 2019, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

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

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

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

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

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

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

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

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

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

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

“Permitted Investments” means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are

backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or Standard & Poor's Rating Group; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the office of the State Treasurer.

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

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

"Processing Fee" means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet attached to this Loan Agreement as Exhibit "A".

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

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

"Resolution" means the Governmental Unit Resolution No. 2019-10 adopted by the Governing Body on June 24, 2019, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

"Term Sheet" means Exhibit "A" attached hereto.

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

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

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the

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

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

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

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

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

(f) Acquisition and Completion of Project. The Project will consist of acquiring a new firefighting apparatus. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws

relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Sections 59A-53-1 through 59A-53-19, NMSA 1978, as amended.

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

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

(i) Loan Agreement Term. The weighted average maturity of 8.817 years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is at least _____ () years.

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

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

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; and (ii) an amount necessary to pay the Processing Fee and the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

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

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

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

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

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

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

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

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

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

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers of the Governmental Unit are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an “arbitrage bond” within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date. The Governmental Unit hereby further represents and covenants to comply with Section 7.6 hereof, which designates this Loan Agreement as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

(x) Use of Fire Protection Fund Revenues. The Governmental Unit will take no action with respect to the Project that would constitute a violation of the terms of Sections 59A-53-7 through 59A-53-10, NMSA 1978, as the same may be amended or recompiled from time to time.

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

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

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

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

Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation.

To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations.

This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned.

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

ARTICLE III
LOAN AGREEMENT TERM

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

ARTICLE IV
LOAN; APPLICATION OF MONEYS

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

(a) To the Trustee, the amount shown on the Term Sheet as the Program

Account Deposit shall be deposited in the Governmental Unit's Program Account to be disbursed by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

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

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

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

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

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit

moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

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

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

(i) Interest Components. Amounts necessary to pay the Interest Components coming due on this Loan Agreement on May 1 and November 1 of each Fiscal Year beginning with the Fiscal Year ending June 30, 2021, as described in Exhibit "B;"

(ii) Principal Payments. Amounts necessary to pay the Principal Components coming due on this Loan Agreement on May 1 of each Fiscal Year beginning with the Fiscal Year ending June 30, 2021, as described in Exhibit "B."

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

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

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided

hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

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

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

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

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI THE PROJECT

Section 6.1 Agreement To Acquire and Complete the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to complete the Project. The Governmental Unit agrees to acquire the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

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

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

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

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

ARTICLE VII
COMPLIANCE WITH LAWS
AND RULES; OTHER COVENANTS

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

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

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

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

between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

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

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

Section 7.7 Arbitrage Rebate Exemption. The Governmental Unit hereby certifies and warrants, for the purpose of qualifying for the exception contained in Section 148(f)(4)(D) of the Code, to the requirement to rebate arbitrage earnings from investments of the proceeds of the Loan Agreement (the “Rebate Exemption”), that: (i) this Loan Agreement is issued by the Governmental Unit which has general taxing powers; (ii) neither this Loan Agreement nor any portion thereof is a private activity bond as defined in Section 141 of the Code (“Private Activity Bond”); (iii) all of the net proceeds of this Loan Agreement are to be used for local government activities of the Governmental Unit (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Governmental Unit); and (iv) neither the Governmental Unit nor any aggregated issuer has issued or is reasonably expected to issue any Tax-Exempt Bonds other than (A) Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) and (B) issued to refund (other than to advance refund (as used in the Code)) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, during the current calendar year, which would in the aggregate amount exceed \$5,000,000. For purposes of this paragraph, “aggregated issuer” means any entity which: (a) issues obligations on behalf of the Governmental Unit; (b) derives its issuing authority from the Governmental Unit; or (c) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit hereby represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D) of the Code.

Accordingly, with respect to the Loan Agreement, the Governmental Unit will qualify for the rebate exemption granted under Section 148(f)(4)(D) of the Code and the Governmental Unit

shall be treated as meeting the requirements of paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States.

The Governmental Unit hereby further represents and covenants that if it is determined that rebatable arbitrage, as that term is defined under Section 148 of the Code and related regulations, is required to be paid to the United States, that it will pay such rebatable arbitrage.

ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after ten (10) years following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Governmental Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Governmental Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

ARTICLE IX INDEMNIFICATION

From and to the extent of the Pledged Revenues, and to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or

other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

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

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given

hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, 2231 Avenida de Mesilla, Las Cruces, New Mexico 88005, Attention: Town Clerk/Treasurer; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue N.E., Suite 500, Albuquerque, New Mexico 87109, Attention: Trust

Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute, constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

[Signature pages follow]

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on May 23, 2019, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By _____
John Gasparich, Interim Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS OF
THE NEW MEXICO FINANCE AUTHORITY:
Sutin, Thayer & Browne A Professional Corporation
As Loan Counsel

By _____
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:

By _____
Daniel C. Opperman, General Counsel

TOWN OF MESILLA, NEW MEXICO

[SEAL]

By _____
Nora L. Barraza, Mayor

ATTEST:

By _____
Cynthia Stoechner-Hernandez, Town Clerk/Treasurer

5112364.docx

S-2

EXHIBIT "A"

TERM SHEET

New Mexico Finance Authority Loan No. PPRF-4963

Governmental Unit:	Town of Mesilla, New Mexico
Project Description:	Purchasing a new firefighting apparatus
Loan Agreement Principal Amount:	\$291,726
Pledged Revenues:	The distribution of State Fire Protection Funds to the Governmental Unit made periodically by the State Treasurer pursuant to Section 59A-53-7, NMSA 1978.
Coverage Ratio:	125%
Distributing State Agency:	State Treasurer
Currently Outstanding Parity Obligations:	NMFA Loan No. PPRF-4582, maturing 2024
Additional Parity Bonds Test:	200%
Authorizing Legislation:	Resolution No. 2019-10 adopted on June 24, 2019
Closing Date:	August 2, 2019
Blended Interest Rate:	2.009417%
Program Account Deposit:	\$289,538
Finance Authority Debt Service Account Deposit:	\$0.05
Processing Fee:	\$2,187.95
First Interest Payment Date:	November 1, 2020
First Principal Payment Date:	May 1, 2021
Final Payment Date:	May 1, 2033

A-1

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A
LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE
AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

B-1

EXHIBIT "C"

FORM OF REQUISITION

RE: \$291,726 Loan Agreement by and between the Town of Mesilla, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Accounting

You are hereby authorized to disburse from the Program Account – the Town of Mesilla, New Mexico (2019 Fire Equipment Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO. PPRF-4963

CLOSING DATE: August 2, 2019

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – the Town of Mesilla, New Mexico (2019 Fire Equipment Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the Town of Mesilla, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the Town of Mesilla, New Mexico shall and understands its obligation to complete the acquisition of the Project from other legally available funds.

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

DATED: _____

By _____
Authorized Officer

Title _____
(Print Name and Title)

C-1

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: \$291,726 Loan Agreement by and between the Town of Mesilla, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Accounting

Susan Ellis
Assistant Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-4963

CLOSING DATE: August 2, 2019

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

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

DATED: _____

By _____
Authorized Officer of Governmental Unit

Title _____
Print Name and Title

Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

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

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

WHEREAS, the principal and interest on the outstanding 2016 Loan Agreement coming due in each Fiscal Year to its last principal payment date is as follows:

2016 Loan Agreement Debt Service Requirements

Fiscal Year Ending	Principal	Interest	Total Payment
2019	\$11,262.00	\$740.10	\$12,002.10
2020	11,344.00	659.00	12,003.00
2021	11,440.00	562.58	12,002.58
2022	11,553.00	449.32	12,002.32
2023	11,686.00	316.46	12,002.46
2024	11,837.00	165.72	12,002.72

WHEREAS, the principal and interest on the 2019 Loan Agreement coming due in each Fiscal Year to its last principal date is as follows:

2019 Loan Agreement Debt Service Requirements

Fiscal Year Ending	Principal	Interest	Total Payment
2021	\$8,570.00	\$9,536.07	\$18,106.07
2022	12,768.00	5,339.58	18,107.58
2023	12,948.00	5,159.56	18,107.56
2024	13,133.00	4,973.10	18,106.10
2025	25,329.00	4,780.04	30,109.04
2026	25,712.00	4,397.58	30,109.58

2027	26,115.00	3,993.90	30,108.90
2028	26,544.00	3,565.62	30,109.62
2029	27,006.00	3,103.74	30,109.74
2030	27,502.00	2,606.84	30,108.84
2031	28,058.00	2,051.30	30,109.30
2032	28,678.00	1,431.22	30,109.22
2033	29,363.00	745.82	30,108.82

NOW THEREFORE, the undersigned do hereby certify as follows:

1. We are familiar with the provisions of the 2016 Resolution authorizing the execution and delivery of the 2016 Loan Agreement and the 2019 Resolution authorizing the execution and delivery of the 2019 Loan Agreement and with the provisions of the 2016 Loan Agreement and the 2019 Loan Agreement.

2. We are familiar with the books, accounts and funds of the Governmental Unit pertaining to the Pledged Revenues.

3. Except as stated in the preambles to this Certificate, the Pledged Revenues have not been pledged or hypothecated to the payment of any outstanding parity lien obligations and no other outstanding obligations are payable from the Pledged Revenues.

4. The Governmental Unit is not, and has not been in default as to making any payments on the 2016 Loan Agreement, nor under any of the covenants or requirements of the 2016 Loan Agreement.

5. The 2019 Loan Agreement is payable from the Pledged Revenues and will constitute a lien upon the Pledged Revenues on a parity with the lien of the outstanding 2016 Loan Agreement.

6. The fiscal year immediately preceding the date of the 2019 Loan Agreement is the period commencing on July 1, 2017 and ending in June 30, 2018.

7. The Pledged Revenues for the fiscal year ended 2018 are fairly stated at \$145,946.

8. The combined maximum Aggregate Annual Debt Service Requirements on the 2016 Loan Agreement and the 2019 Loan Agreement for the parity bond test set out in the preambles of this Certificate occurs in Fiscal Year 2023 and is \$30,110.02. Two hundred percent (200%) of such amount is \$60,220.04.

9. The Pledged Revenues of \$145,946 (i.e., paragraph 7 above) for the fiscal year immediately preceding the date of the execution and delivery of the 2019 Loan Agreement were sufficient to pay an amount representing 200% of the combined maximum Aggregate Annual Debt Service Requirements of \$60,220.04 on the 2016 Loan Agreement and the 2019 Loan Agreement.

10. This certificate is for the benefit of each holder from time to time of the 2019 Loan Agreement and for the benefit of bond counsel in rendering opinions to the effect that the 2019 Loan Agreement is secured by a lien pledge on the Pledged Revenues on a parity with the 2016 Loan Agreement.

(Signature Page Follows)

WITNESS our hands this 2nd day of August, 2019.

TOWN OF MESILLA, NEW MEXICO

[SEAL]

By _____
Nora L. Barraza, Mayor

By _____
Cynthia Stoechner-Hernandez, Town
Clerk/Treasurer

5113424.docx



RESOLUTION 2019-11

AUTHORIZING THE EXECUTION OF AN AGREEMENT OF THE CAPITAL OUTLAY PROGRAM ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the *Town of Mesilla* and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be *\$75,000.00* to be funded by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 100% or *\$75,000.00*, and
- b. *Town of Mesilla's* proportional matching share shall be 0% or *\$0.00*

TOTAL PROJECT COST IS *\$75,000.00*

Town of Mesilla shall pay all costs, which exceed the total amount of *\$75,000.00*

Now therefore, be it resolved in official session that *Town of Mesilla* determines, resolves, and orders as follows:

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

The agreement terminates on **June 30, 2023 (for Laws of 2019)** and the *Town of Mesilla* incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the *Town of Mesilla* to enter into Cooperative Agreement Control Number *C1193343* with the New Mexico Department of Transportation for Capital Outlay **Laws of 2019** to *plan, design and construct street, drainage and utility improvements on Calle de Parian* within the control of the *Town of Mesilla* in *Dona Anna County*, New Mexico.

PASSED AND APPROVED this 24th day of June 2019.

Nora Barraza, Mayor

ATTESTED:

Cynthia Stohner-Hernandez
Town Clerk/Treasurer

(SEAL)

Contract Number: _____
Vendor Number: 0000046323
Control Number: C1193343

**STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the “Department” or abbreviation such as “NMDOT”, and Town of Mesilla, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2019, Chapter 277, Section 40, Subsection 73, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID D3343 NMDOT Control Number C1193343 **\$75,000**

APPROPRIATION REVERSION DATE: 6/30/2023

Laws of 2019, Chapter 277, Section 40, Subsection 73, Seventy Five Thousand Dollars and No Cents (\$75,000), to plan, design and construct street, drainage and utility improvements on calle de Parian in Mesilla in Dona Ana county .

The Grantee's total reimbursements shall not exceed Seventy Five Thousand Dollars and No Cents \$75,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")¹, if applicable, , which equals Seventy Five Thousand Dollars and No Cents \$75,000 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse² Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

¹ The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

² "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: Town of Mesilla
Name: Debra Lujan
Title: Public Works Director
Address: 2231 Avenida de Mesilla, Mesilla, New Mexico 88046
Email: debral@mesillanm.gov
Telephone: 575-524-3262

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Local Government Road Fund Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@state.nm.us
Telephone: 575-544-6536

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2023** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
 - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
 - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
 - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
 - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
 - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
 - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
 - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
 - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
 - (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
 - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Town of Mesilla may immediately terminate this Agreement by giving Contractor written notice of such termination. The Town of Mesilla's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Town of Mesilla or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Town of Mesilla or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the Town of Mesilla may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Town of Mesilla only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
 2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
 3. timely submit all required financial reports to its budgetary oversight agency (if any); and
 4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

- B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
 2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
 3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
 4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee’s sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department’s failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the

SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

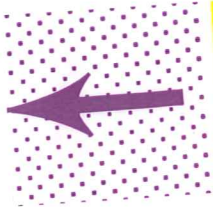
B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE



Signature of Official with Authority to Bind Grantee

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Date

DEPARTMENT OF TRANSPORTATION

By:

Its: Cabinet Secretary or Designee

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Cynthia A. Christ
By: Cynthia Christ

Its: Assistant General Counsel

5-15-19
Date

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1**

I. Grantee Information				II. Payment Computation			
<small>(Make sure information is complete & accurate)</small>							
A.	Grantee:			A.	Payment Request No.		
B.	Address:			B.	Grant Amount:		
<small>(Complete Mailing, including Suite, if applicable)</small>				C.	AIPP Amount <i>(If Applicable)</i> :		
	<small>City</small>	<small>State</small>	<small>Zip</small>	D.	Funds Requested to Date:		
				E.	Amount Requested this Payment:		
C.	Phone No:			F.	Reversion Amount <i>(If Applicable)</i> :		
D.	Grant No:			G.	Grant Balance:		
E.	Project Title:			H.	<input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB <i>(attach wire if first draw)</i>		
F.	Grant Expiration Date:			I.	<input type="checkbox"/> Final Request for Payment <i>(if Applicable)</i>		
III. Fiscal Year :							
<small>(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)</small>							
IV. <input type="checkbox"/> Reporting Certification:				I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.			
V. <input type="checkbox"/> Compliance Certification:				Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.			
Grantee Fiscal Officer				Grantee Representative			
<small>or Fiscal Agent (if applicable)</small>							
Printed Name				Printed Name			
Date:				Date:			
(State Agency Use Only)							
Vendor Code:		Fund No.:		Loc No.:			
I certify that the State Agency financial and vendor file information agree with the above submitted information.							
Division Fiscal Officer				Division Project Manager			
Date				Date			

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]

FROM: Grantee: [_____]

Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: [_____]

Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____]
entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the
following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]

Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]

Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]

Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within
the scope of the project description, subject to all the terms and conditions of the above referenced Grant
Agreement.

Grant Amount (Minus AIPP if applicable): [_____]

The Amount of this Notice of Obligation: [_____]

The Total Amount of all Previously Issued Notices of Obligation: [_____]

The Total Amount of all Notices of Obligation to Date: [_____]

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]

Title: [_____]

Signature: [_____]

Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The Town of Mesilla shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The Town of Mesilla shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.



Town of Mesilla, New Mexico

BOT ACTION FORM **Z19-001 ZONE CHANGE APPEAL**

Z19-001 – Submitted by Jesus Caro, an application for a zone change from Rural Farm, five-acre minimum lot size (RF) to Residential, one acre minimum lot size (R-1) for a 4.36 acre residential parcel located at the west end of Fresquez /Snow Road (a private easement). (A Public Hearing for this case was held by the PZHAC on April 2, 2019)

On April 2, 2019 the PZHAC held a Public Hearing for Z19-001, and made a decision at their Regular Meeting on the same date to postpone a decision on the rezoning. The case was discussed again by the PZHAC on May 20, 2019 at which time the PZHAC determined that the zone change would not be compatible with the Comprehensive Plan and denied the Zone change request. (See attached info provided to the PZHAC and minutes of the meetings.)

The applicant is appealing the PZHAC's decision to deny the Zone Change request (see attached Appeal letter). Such an appeal is provided for by the following sections of the Mesilla Town Code:

18.06.150 Appeal from a planning and platting decision of the planning, zoning and historical appropriateness commission – Grounds – Action in district court.

- A. The board of trustees shall provide by resolution the procedure to be followed in considering appeals from planning, zoning and historical appropriateness commission action on planning and platting matters.**
- B. Any person, in interest, dissatisfied with any planning and platting order or determination by the planning, zoning and historical appropriateness commission may appeal to the board of trustees. An appeal shall be filed within 20 days of the decision of the planning commission and dated in the town clerk-treasurer's office. The town clerk-treasurer shall forthwith forward the appeal to the board of trustees.**
- C. If the board of trustees determines that the order or determination or any part thereof of the planning, zoning and historical appropriateness commission is unlawful or unreasonable, the board of trustees may make any appropriate change in any such order or determination. The board of trustees shall act upon the appeal within 40 days after the notice of appeal was filed.**
- D. An appeal from the decision of the board of trustees may be appealed to the district court as provided by Section [3-19-8](#) NMSA 1978. [Ord. 2009-05 § 2]**

18.06.160 Appeal from a zoning decision of the planning, zoning and historical appropriateness commission – Grounds – Stay of proceedings.

- A. The board of trustees shall provide by resolution the procedure to be followed in considering appeals from planning, zoning and historical appropriateness commission action on zoning matters.**
- B. Any aggrieved person or any officer, department or board or bureau of the municipality affected by a zoning decision of the planning, zoning and historical appropriateness commission, or official or committee thereof, in the exercise of its zoning duties and powers may appeal to the board of trustees....**
- C. If the board of trustees determines that the order or determination or any part thereof of the planning, zoning and historical appropriateness commission is unlawful or unreasonable, the board of trustees may make any appropriate change in any such order or determination. The board of trustees shall act upon the appeal within 40 days after the notice of appeal was filed.**
- D. When an appeal alleges that there is error in any order, requirement, decision or determination by the planning, zoning and historical appropriateness commission, or an official or committee thereof, in the exercise of its powers and duties, the board of trustees by a two-thirds vote of all of its members may:**

1. Authorize, in appropriate cases and subject to appropriate conditions and safeguards, special exceptions to the terms of the zoning ordinance or resolution:
 - a. Which are not contrary to the public interest;
 - b. Where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and
 - c. So that the spirit of the zoning ordinance is observed and substantial justice done; or
2. In conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:
 - a. Reverse any order, requirement, decision or determination of the planning, zoning and historical appropriateness commission, or official or committee thereof;
 - b. Decide in favor of the appellant; or
 - c. Make any change in any order, requirement, decision, or determination of the planning, zoning and historical appropriateness commission, or official or committee thereof. [Ord. 2009-05 § 2]

If the BOT determines that the PZHAC was in error and decides to overturn the PZHAC's decision to deny the zone change request, it will need to determine that the zone change is not spot zoning, and that the requested zoning is compatible with the Comprehensive Plan for the Town.

BOT OPTIONS:

1. Affirm the decision of the PZHAC and deny the zone change request.
2. Overturn the decision of the PZHAC and approve the zone change request.
3. Overturn the decision of the PZHAC and approve the zone change request with conditions (Conditional Zoning)

BOT ACTION:

May 21, 2019

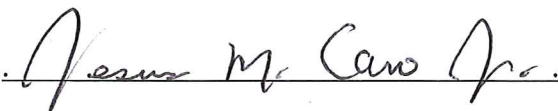
From: Jesus M. Caro Jr.

To: Mayor / Board of Trustees

Subject: Appealing PZHAC Denial of Request of Zone Change from RF to R-1

I, Jesus M. Caro Jr., am appealing PZHAC's denial on the basis of an unfair, biased and discriminatory decision that didn't take any of the facts presented into consideration or even the fact that R-1 precedence has already been established by present property owners on all 14 acres of this strip of land that is contiguous to my parcel of land. Also, I wasn't comfortable that in the first hearing, only two P&Z voting members were present and for the second meeting, only 1 of those 2 was present, but both of the members who weren't originally present showed up unprepared and didn't appear to be cognizant of what had previously been discussed. However, in a meek and unsure manner, they went ahead and followed suit with commissioner Lucero's vote to deny.

Since my property is the only tract of property that is zoned RF within this strip of parcels which are adjoined to each other, I am requesting a zone change from the present Rural Farm Zone (RF) to Single-Family Residential Zone (R-1) which for all practical purposes has already been established. Another point to keep in mind during consideration for a zone change is that last year the town routed water lines down our easement in order to complete a closed loop for better water pressure. In addition, as part of their plan for future development, they installed six fire hydrants approximately five feet off of our easement every 200 yards or so, thus further affirming their recognition and approval of this strip of land as R-1 Zone subdivisions. Being that my parcel is the only one that is zoned Rf and all other properties within this strip of land are zoned R1, I will be doing away with the spot zoning condition that presently exists if you go by its definition that spot zoning exists when there is a "Variation in zoning where a piece of land is zoned differently than that surrounding it."

Signature: 

Z19-001
INFORMATION PRESENTED TO THE PZHAC
APRIL 2, 2019

PZHAC NEW BUSINESS

APRIL 2, 2019

PUBLIC HEARING

ZONE CHANGE

Z19-001

ZONE CHANGE REQUEST Z19-001
[PZHAC PUBLIC HEARING AND REVIEW]
STAFF ANALYSIS
(PRESENTED TO PZHAC 4/2/19)

Item:

Z19-001 – Submitted by Jesus Caro, an application for a zone change from Rural Farm, five acre minimum lot size (RF) to Residential, one acre minimum lot size (R-1) for a 4.36 acre residential parcel located at the west end of Fresquez /Snow Road (a private easement).

Description of Request:

Although the legal description for the property shows the property as being 4.461 acres in size, County records show the property as being 4.36 acres. This discrepancy is due to the fact that the County is not counting the R.O.W easement along the south and west edges of the parcel as part of the land area. Either way, the size of the property is less than the five acres required by the current Rural Farm (RF) zoning of the property.

The applicant's justification for this zone change request (see the applicant's response to Section 3 of the Application for a more detailed justification, attached). In the justification, the applicant references the fact that there is a 14 acre strip of land that adjoins his property to the east, consisting of primarily one acre parcels, that is zoned Residential, One-acre Minimum Lot Size (R-1). According to the applicant, this strip of R-1 acre zoning has been recognized in the Town's Comprehensive Plan. The applicant's property is the only property in this strip that is not zoned R-1. Additionally, these lots have not been farmed in the last twenty years due to water restrictions imposed by EBID due to drought conditions.

The applicant also believes that the Town has encouraged the development of this strip of land by running a water line with fire hydrants down the existing easement, thereby recognizing this strip of R-1 zoned land being used for subdivisions. According to the applicant, the location of the water line and fire hydrants along the easement is an acknowledgement by the Town that the "...easement or road width is in conformance since the town sanctioned the locations of the fire hydrants knowing the present width of easement."

The applicant also states that if the zone change is approved, it would enable him to give a piece of his property to his daughter to build a home on. The applicant does not believe that the zone change, and subsequently, his daughter's home, will adversely affect the neighbors right, property values, or the "...spirit of the neighborhood." The applicant has also submitted a petition signed by three of his immediate neighbors in support of his request.

There are two concepts that have been brought up in the applicant's rationale for the zone change. One is that the smaller properties in this area are no longer suitable for farming and, since the R-1 zoning already exists, this area should be developed. The other is that he would like to split off (subdivide) a piece of his property for his daughter. The PZHAC should keep in mind that these are actually two separate processes, and that the zoning of the property does not grant an absolute right to subdivide the property. Typically, the ability to subdivide a property is dependent on certain conditions being met such as easement width, the availability of utilities, etc. The ability of the subdivider to meet these requirements would be determined through the subdivision process.

There have been allegations by a nearby property owner of improprieties by the Town in the creation of the lots that are currently zoned R-1, and in the subsequent rezoning of these lots from RF to R-1. Staff has not been able to determine any wrongdoing by either the Town or the landowners in the creation of the one acre parcels, or the subsequent rezoning of the parcels years ago. If there had been any capricious or arbitrary decisions by the Town in either allowing or recognizing the creation of the lots; or in allowing the zone change to R-1, this should have been addressed by the aggrieved party or parties through the proper appeal or legal processes in effect at the time. It does not appear that this was done.

Consistency with the Code:

The PZHAC will need to determine that the proposed zone change will be compatible with the Mesilla Comprehensive Plan, and will not constitute "spot zoning". The PZHAC will also need to determine that the requested zone change will not have a detrimental effect on the surrounding properties and the Town.

The PZHAC will need to make the following Findings for approval:

- The PZHAC has jurisdiction to review this request.
- The zoning code allows this type of zone change request.
- The application meets the requirements of the Code for a zone change.
- The requested zone change would not be out of character with the Comprehensive Plan, nor will it constitute “spot zoning”.
- The proposed zoning, as requested, or amended with conditions; will be beneficial to the Town.
- The proposed zone change meets all other applicable Code requirements.

PZHAC OPTIONS:

Recommend approval to the BOT of application.

Recommend approval to the BOT of application with conditions.

Reject the application.

PZHAC ACTION:

Doña Ana County, NM

General Reference Maps

2014 Aerial

Addresses

County Address Points

Select Search Type:

Maps

Legend

Map Themes

Parcels

UDC Zoning

Roads and Transportation

NM House Districts

NM Senate Districts

County Commission Districts

City Council Districts

Median Household Income

General Land Ownership

Account Number: [R0400987](#)

Parcel Number: 4005139210015

Owner: CARO JESUS M JR & DORA

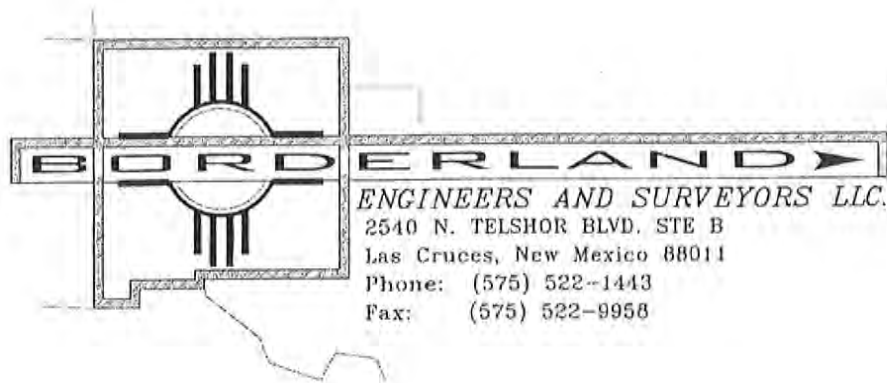
Mail Address: PO BOX 284

Subdivision:

Property Address: SNOW RD

Acres: 4.3599999





July 8, 2011

DESCRIPTION OF A 4.461 ACRE TRACT

A tract of land situate within the Town of Mesilla, Doña Ana County, New Mexico, as part of U.S.R.S. Tract 12-9A2, Located in Section 35, T.23S., R.1E. and Section 2, T.24S., R.1E., N.M.P.M. of the U.S.R.S. Surveys and being more particularly described as follows, to wit:

BEGINNING at an Iron Pipe Found for the Northeast Corner of this Tract, **WHENCE**, the North 1/4 Corner of Section 2, T.24S., R.1E., N.M.P.M. of the U.S.R.S. Surveys bears S.62°05'30"E., 496.95 feet;

THENCE, from the point of beginning, S.19°25'30"E., a distance of 538.37 feet to a Mark Set for the Southeast corner of this tract;

THENCE, S.60°11'30"W., a distance of 492.52 feet to an 1/2" Iron Rod Set for the Southwest corner of this tract;

THENCE, along the East Right-of-Way line of the Del Rio Drain, N.03°32'00"E., a distance of 634.50 feet to a 1/2" Iron Rod Set for the Northwest corner of this tract;

THENCE, leaving the Del Rio Drain, N.60°18'50"E., a distance of 240.81 feet to the point of beginning, enclosing 4.461 acres of land, more or less. Subject to a 24 foot wide Right-of-Way Easement parallel and adjacent to the South boundary of this Tract and 254.31 feet along the East boundary. Also Subject to any easements, patents and reservations of record.

Ted G. Scanlon, PS No. 9433

Application Form for Zone Change:

Name(s) of Property Owner(s): Jesus M. Caro Jr. & Dora

Name of Applicant(s): Jesus M. Caro Jr. & Dora

Address: 2886 Snow Road, Mesilla, NM 88046

Section 3:

Why is the change of zoning status being requested?

The original intent of the Town of Mesilla's RF zone ordinance which is for the preservation of agricultural uses and for the continuance of agriculturally related industries and activities has not been viable for my property in the last fifteen years. My property is adjoined to a strip of land of about 14 acres that have all been subdivided into a minimum of one acre parcels. The county acknowledges this and in fact takes it into consideration for the individual property assessment and evaluation fees. The Town of Mesilla also saw it appropriate to include maps that shows said strip of one acre parcels in their Comprehensive Plan to be utilized for future planning purposes. None of these properties have been farmed or used for agricultural purposes in the last twenty years due to strict water restrictions imposed on us by the Elephant Butte Irrigation District. This came about as a direct result of drought conditions that have been experienced throughout our state. Based on noted facts, the RF zoning of this strip of land, to include my own parcel, is obsolete and outdated.

Hence, due to the above noted circumstances, and since my property is the only tract of property that is zoned RF within this strip of parcels which are adjoined to each other, I am requesting a zone change from the present Rural Farm Zone (RF) to Single-Family Residential Zone (R-1) which for all practical purposes has already been established. Another point to keep in mind during consideration for a zone change is that last year the town routed water lines down our easement in order to complete a closed loop for better water pressure. In addition, as part of their plan for future development, they installed six fire hydrants approximately five feet off of our easement every 200 yards or so, thus further affirming their recognition and approval of this strip of land as R-1 Zone subdivisions. Apparently the town has also acknowledged that our easement or road width is in conformance since the town sanctioned the location of the fire hydrants knowing the present width of easement. Approval of the requested zone change will allow me to give my daughter who is a Navy veteran and mother of three, a piece of land on which to build on and will be utilized in a more efficient and beneficial manner. The zone change is necessary to allow enjoyment of my own land and will not infringe on neighboring property owner's rights, nor lessen property values or interfere with the use of the property by current residents, nor will it adversely affect the spirit of the neighborhood.

Date: 19 February 2019
To: PZHAC
From: RF to R-1 Neighbor Supporters

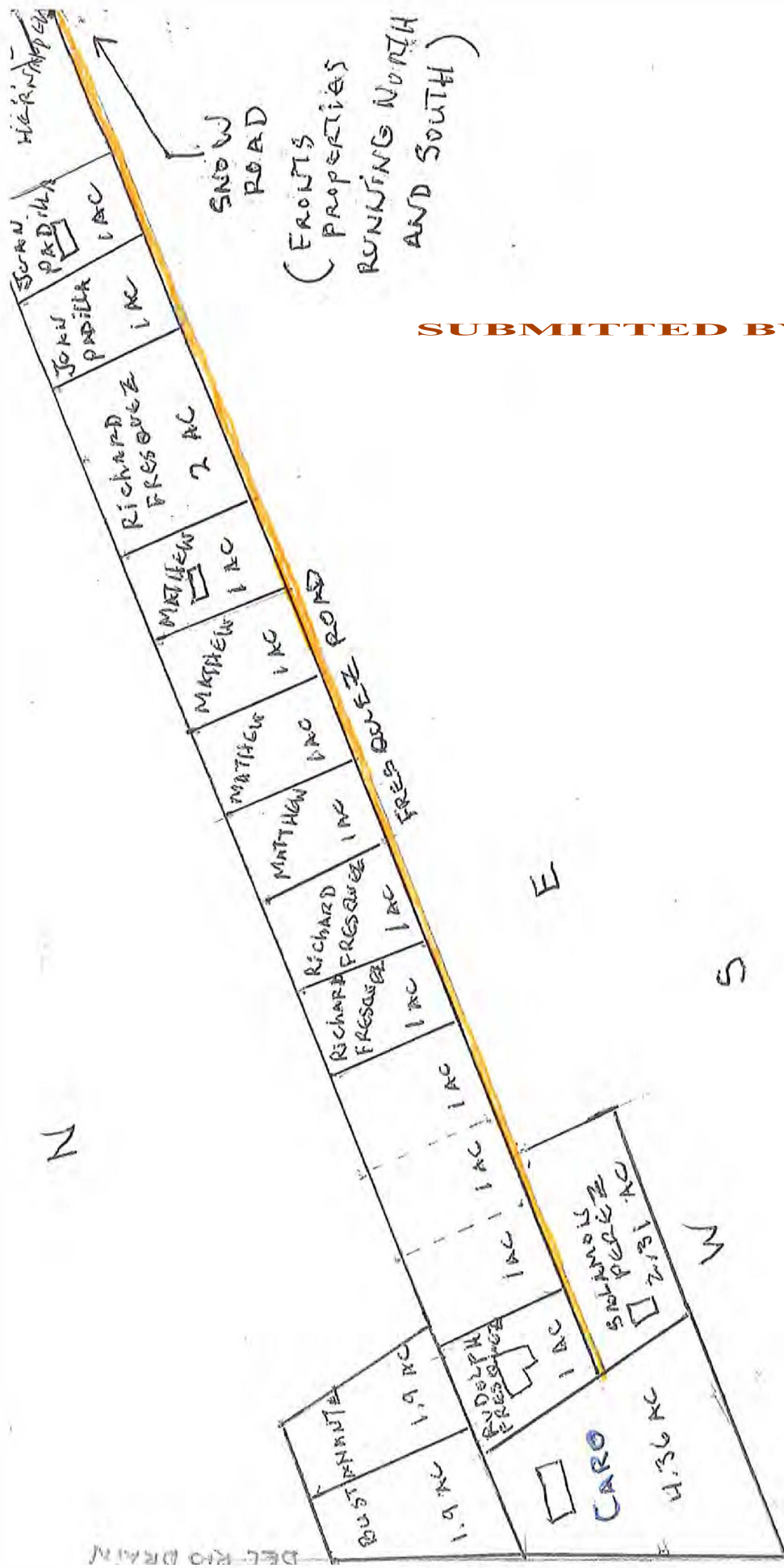
To Whom It May Concern:

This letter is in support of Mr. Caro's zone change request for his parcel of land from the present Rural Farm Zone (RF) to Single-Family Residential Zone (R-1). We, the following all agree it would only be fair and just to grant him this request based his assessment of this particular strip of land that borders his property. We believe that all of his noted justifications are valid and will not adversely affect the spirit of our neighborhood. Thank you for your consideration in this matter.

Paloma Perez

R.V. Frey

Richard Mosquera



(FRONTS
 RUNNING NORTH
 AND SOUTH)

SUBMITTED BY APPLICANT

[Handwritten signature/initials]

DEL RIO DRAIN



Town of Mesilla, New Mexico

DATE: March 18, 2019

Dear Property Owner:

In accordance with the Town of Mesilla regulations regarding variances, I am notifying you as, a neighboring property owner within 100 feet of the subject property, the Town of Mesilla Planning, Zoning and Historical Appropriateness Commission (PZHAC) will be holding a Public Hearing on:

Tuesday April 2, 2019 at 6:00 PM
at: Town of Mesilla
2231 Avenida de Mesilla
Mesilla, NM 88046

To obtain input on an application for a zone change from Rural Farm, five acre minimum lot size (RF) to Residential, one acre minimum lot size (R-1) for a 4.36 acre residential parcel located at the west end of Fresquez /Snow Road (a private easement).

Anyone who is concerned with this matter may address the Board of Adjustments at the Public Hearing, or send a written response to:

Town of Mesilla
Community Development Department
PO Box 10
Mesilla, NM 88046.

Letters must be received before the Public Hearing. In addition to mailing the letter, a copy may be faxed to Larry Shannon at 575-541-6327 or e-mailed to larrys@mesillanm.gov to ensure timely receipt.

Sincerely,



Larry Shannon
Community Development Coordinator
Town of Mesilla

Z19-001 NOTIFICATION MAP



★ Applicant: Jesus M. (Jr.) and Dora Caro, PO Box 284, Mesilla, NM 88046

PROPERTY OWNERS (within 100 feet):

1. Ignacio and Natalia Bustamante, 2300 W. Union Ave., Las Cruces, NM 88005
2. Ignacio and Natalia Bustamante, 2300 W. Union Ave., Las Cruces, NM 88005
3. Rudolph V. and Viola P. Fresquez, PO Box 401, Mesilla, NM 88046
4. Solomon R. and Delfina F. Perez, PO Box 456, Mesilla, NM 88046
5. Stuart M. Hutson, PO Box 39, Mesilla, NM 88046
6. Stuart M. Hutson, PO Box 39, Mesilla, NM 88046
7. Sonya L. Cooper, 3090 Snow Road, Las Cruces, NM 88005
8. Thomas and Minerva Belczak, PO Box 814, Mesilla, NM 88046
9. Enrique and Mary DeMatteo, PO Box 549, Mesilla, NM 88046

Town of Mesilla, New Mexico

Phone (575) 524-3262

P.O. Box 10

2231 Avenida de Mesilla, Mesilla, NM 88046



Application Form For Zone Change

Case # 060870 Date Submitted FEB. 25, 2019

Discussed by: PZHAC Date (s) APRIL 2, 2019

Section 1:

Name (s) of Property Owner (s) JESUS M. CARO JR & DORA

Address 2886 SNOW ROAD Phone (575) 202-1955

Name of Applicant (s) JESUS M. CARO JR. & DORA

Address 2886 SNOW ROAD Phone (575) 202-1955

Section 2:

Property Description: Address 2886 SNOW ROAD

Legal Description Lot (s) 5 AC. PARCEL Block _____
(SEE ATTACHED LEGAL DESCRIP.)

Subdivision N/A

If legal description is in metes and bound; is it attached to the application? Yes No _____

Survey Plat attached: Yes _____ No

Area (sq. ft. or acres) 4.46 AC Present Zone RF Present Land Use RESIDENTIAL

Proposed Land Use:
RESIDENTIAL

(PLEASE COMPLETE BOTH SIDES)

Section 3:

Why is this change of zoning status being requested?

SEE ATTACHED PAGES

Signatures: Property Owner Jesus M. Caro Jr / Dora Caro
Applicant JESUS M. CARO JR / DORA CARO

NOTICE: NO APPLICATION WILL BE ACCEPTED WITHOUT THE SIGNATURE OF THE OWNER (S) OF RECORD OF THE ABOVE DESCRIBED PROPERTY. IF MORE THAN ONE, ALL OWNERS OF OR THEIR AGENTS MUST SIGN.

Fee Paid : Yes No Affidavit : Yes No
(STATEMENT)

Received by: L. SHANNON Receipt #: _____ Amount: \$350.00

RESIDENT

Z19-001
STAFF-WRITEUP PRESENTED TO THE
PZHAC MAY 20, 2019

(ALL OTHER INFORMATION WAS THE SAME AS PRESENTED
AT THE APRIL 2, 2019 HEARING AND MEETING)

PZHAC NEW BUSINESS

MAY 20, 2019

ZONE CHANGE
Z19-001

ZONE CHANGE REQUEST Z19-001
[PZHAC REVIEW 5/20/19]
STAFF ANALYSIS
(ORIGINALLY PRESENTED TO THE PZHAC 4/2/19)

Item:

Z19-001 – Submitted by Jesus Caro, an application for a zone change from Rural Farm, five acre minimum lot size (RF) to Residential, one acre minimum lot size (R-1) for a 4.36 acre residential parcel located at the west end of Fresquez/Snow Road (a private easement).

Description of Request:

Although the legal description for the property shows the property as being 4.461 acres in size, County records show the property as being 4.36 acres. This discrepancy is due to the fact that the County is not counting the R.O.W easement along the south and west edges of the parcel as part of the land area. Either way, the size of the property is less than the five acres required by the current Rural Farm (RF) zoning of the property.

The applicant's justification for this zone change request (see the applicant's response to Section 3 of the Application for a more detailed justification, attached). In the justification, the applicant references the fact that there is a 14 acre strip of land that adjoins his property to the east, consisting of primarily one acre parcels, that is zoned Residential, One-acre Minimum Lot Size (R-1). According to the applicant, this strip of R-1 acre zoning has been recognized in the Town's Comprehensive Plan. The applicant's property is the only property in this strip that is not zoned R-1. Additionally, these lots have not been farmed in the last twenty years due to water restrictions imposed by EBID due to drought conditions.

The applicant also believes that the Town has encouraged the development of this strip of land by running a water line with fire hydrants down the existing easement, thereby recognizing this strip of R-1 zoned land being used for subdivisions. According to the applicant, the location of the water line and fire hydrants along the easement is an acknowledgement by the Town that the "...easement or road width is in conformance since the town sanctioned the locations of the fire hydrants knowing the present width of easement."

The applicant also states that if the zone change is approved, it would enable him to give a piece of his property to his daughter to build a home on. The applicant does not believe that the zone change, and subsequently, his daughter's home, will adversely affect the neighbors right, property values, or the "...spirit of the neighborhood." The applicant has also submitted a petition signed by three of his immediate neighbors in support of his request.

There are two concepts that have been brought up in the applicant's rationale for the zone change. One is that the smaller properties in this area are no longer suitable for farming and, since the R-1 zoning already exists, this area should be developed. The other is that the applicant would like to split off (subdivide) a piece of his property for his daughter. The PZHAC should keep in mind that these are actually two separate processes, and that the zoning of the property does not grant an absolute right to subdivide the property. Typically, the ability to subdivide a property is dependent on certain conditions being met such as easement width, the availability of utilities, etc. The ability of the subdivider to meet these requirements would be determined through the subdivision process.

It has been brought to staff's attention that the one acres lots zoned R-1 shown on the DAC maps for the area may not legally exist as one acre lots. Deeds for the properties from 1970-1980 appear to show the lots as 5-4-5 acres in size. It appears that there was intent to split the properties in 1.75 acre parcels, but that this was never officially done, even though the rezoning to allow the creation of one acre lots was done in 1980. This could be considered a good example of the fact that the zoning does not automatically result in the creation of smaller lots, and that the creation of smaller lots is a separate subdivision process.

The PZHAC will need to determine the following, bases on evidence presented at the Public Hearing:

1. The proposed zone change will be compatible with, and is supported by the Mesilla Comprehensive Plan.
2. The subject property shares similar characteristics to the properties zoned R-1 in order to determine that the request would not result in spot zoning.
3. The requested zone change will not set a precedent that will have a detrimental effect on the surrounding properties and the Town.

The PZHAC will need to make the following Findings for approval:

- The PZHAC has jurisdiction to review this request.
- The zoning code allows this type of zone change request.
- The application meets the requirements of the Code for a zone change.
- The requested zone change would not be out of character with the Comprehensive Plan, nor will it constitute “spot zoning”.
- The proposed zoning, as requested, or amended with conditions; will be beneficial to the Town.
- The proposed zone change meets all other applicable Code requirements.

PZHAC OPTIONS:

Recommend approval to the BOT of application.

Recommend approval to the BOT of application with conditions.

Reject the application.

PZHAC ACTION:

**MINUTES
OF THE Z19-001
PUBLIC HEARING (APRIL 4, 2019)
AND
REGULAR MEETINGS (APRIL 4 AND MAY 20, 2019)**



Town of Mesilla, New Mexico

MINUTES OF Z19-001 PUBLIC HEARING AND MEETINGS (APRIL 2, 2019 AND MAY 20, 2019)

PZHAC REGULAR MEETING AGENDA APRIL 2, 2019

THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION (PZHAC) WILL HOLD ITS REGULARLY SCHEDULED MEETING **TUESDAY**, APRIL 2, 2019 AT 6:00 P.M. IN THE BOARD ROOM OF THE MESILLA TOWN HALL, 2231 AVENIDA DE MESILLA.

PUBLIC HEARING AND DECISION

Z19-001 – Submitted by Jesus Caro, an application for a zone change from Rural Farm, five acre minimum lot size (RF) to Residential, one acre minimum lot size (R-1) for a 4.36 acre residential parcel located at the west end of Fresquez /Snow Road (a private easement).

The PZHAC closed the Regular Meeting and opened the Public Hearing. The applicant was present to provide information, and to answer any questions that might arise. Staff provided a brief description of the request and provided the PZHAC with the applicant's rationale for requesting the zone change.

Input taken from the public during the Public Hearing consisted of: (Minutes corrected as of 6/20/19 to include statements by Chris Alexander and Susan Krueger that had been inadvertently omitted.)

Chris Alexander – Town Business Owner and former PZHAC Commissioner

Gave a brief history of the R-1 zoning of the properties along the “Fresquez” easement (all of the properties currently zoned R-1). He stated that this was approved by the Town as an intra-family lot split at the County recognized the one acre parcels in order to allow the property to be split for the Fresquez family. This had the effect of creating spot zoning. He also stated that because of this, a zone change request may be hard to deny in that a precedent had been set, but should not be encouraged. He also stated that the current request is just for a zone change, not a subdivision for one acre. He encouraged the PZHAC to support the zone change.

Susan Krueger – resident adjacent to the R-1 zone

She questioned the investigative process by staff. She referenced the rezoning of the Cotton Gin and stated that this was spot zoning, despite the Town's legal opinion. She stated that even though the original zone change to R-1 was done in 1980, there is a legal restriction that limits the division of the 14 acres zoned R-1 to three parcels of 5 acres, 4 acres, and 5 acres. She said that she has spoken with Dona Ana County staff and that there is no record that a subdivision was done through Mesilla to create one acre parcels from the three larger parcels mentioned earlier. She also stated that the applicant's parcel has never been part of the original 14 acres. She wants staff to investigate the statements made in the application.

Jesus Caro – applicant

Stated that the R-1 zoning of the properties in the area has been established and is supported by the Town's location of the new water line, which is at the edge of the 15 foot wide easement. According to Mr. Caro, this indicates that the Town recognizes that the 15 foot wide easement is adequate for subdivisions in the area, further supporting the precedent set by the initial zoning of the property.

Solomon Perez - notified property owner and neighbor of applicant

Located just west end of the R-1 zoned properties, but is not zoned R-1, and is not in the farming business. Stated that the Town needs to grow and needs revenue. Farming will not provide the revenue the Town needs, therefore property owners should be able to subdivide their land to provide more property tax for the Town. Stated that he supports the zone change application wholeheartedly.

Chris Alexander – Town Business Owner and former PZHAC Commissioner

Stated that people are not aware of the concept of weighted zoning in which the Town is zoned from dense use to sparse use. He said that the Town had tried to protect farming through zoning and created a “greenbelt” around the Town. Many lots were zoned RF even though they did not meet the five acre size requirements and that protection of the RF zoning in order to protect the existence of Mesilla. However, since the Town allowed the R-1 zoning in the first place, it should be fair to the other small property owners and “support” the zone change.

There were no further comments.

**PUBLIC HEARING WAS CLOSED
REGULAR MEETING WAS REOPENED**

Commission Chair Hernandez asked for input from the PZHAC.

Commissioner Lucero

Expressed surprise that the applicant wants to change his view of preserving the “greenbelt” and create smaller properties, since he was a main proponent behind preserving it through the years. She does not want to see Mesilla become another Las Cruces. She will stand by the “greenbelt”. She stated that the Town has turned down other development in the RF zone, and she does not want to create a precedent with this case.

Commission Chair Hernandez

Stated that he would like to get legal clarification on some points and recommended postponing the case in order to obtain legal opinions.

Commissioner Lucero

Said that the Ordinance needs to be protected, and that we are not talking about a prior zone change that took place in 1980 or the subdivision of properties, the concern of the PZHAC should be the current zone change request.

Commissioner Nevarez

Would like more information

Juan Padilla – Property owner in the R-1 zone

Stated that the subdivision of the properties zoned R-1 was done prior to the R-1 zoning of the property.

Commission Chair Hernandez

Called for a postponement of the case in order to get legal opinions on: would this be considered spot zoning; whether the case would set a precedent; and whether the applicant’s parcel should be considered contiguous to the parcels zoned R-1. This was seconded by Commissioner Nevarez.

A vote was taken with Commissioner Nevarez voting for postponement and Commissioner Lucero voting against postponement. Commission Chair voted for postponement and the case was postponed.

A DECISION ON THE CASE WAS POSTPONED.

PUBLIC COMMENTS (Further comments about Z19-001)

Chris Alexander – Town Business Owner and former PZHAC Commissioner

Referencing the zone change for the property owned by Arturo Jurado, stated that the opinion for “spot zoning” was erroneous in that the commercial parcels in the County should never have been taken into account. Precedence was set. The property that is zoned R-1 is in the Comprehensive Plan because it was zoned R-1 in 1979, and a precedence was set. .

Jesus Caro – applicant

Stated that the “greenbelt” was no longer viable for farming.

Solomon Perez - notified property owner and neighbor of applicant

Stated that larger farmers can make a living from farming their properties, smaller farmers cannot, and that the “greenbelt” lots cannot be farmed anymore. He also stated that the young have left because they can’t afford to stay due to the rules, and that Mesillaros and small farmers have been run off.

PZHAC/STAFF COMMENTS (Further comments about Z19-001)

Commissioner Lucero

Stated that preservation of Mesilla is important, and that even though mistakes were made in the past does not mean they should be repeated. Past boards have turned down applications in the RF zone. Jesus should be supporting the ordinance, not working against it. It is important to preserve Mesilla.

**PZHAC REGULAR MEETING
MINUTES
MAY 20, 2019**

THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION (PZHAC) WILL HOLD ITS REGULARLY SCHEDULED MEETING MONDAY, MAY 2, 2019 AT 6:00 P.M. IN THE BOARD ROOM OF THE MESILLA TOWN HALL, 2231 AVENIDA DE MESILLA

PUBLIC INPUT ON CASES

Both Susan Krueger, resident; and Jesus Caro, zone change applicant; had comments about the zone change (Z19-001) that they read from prepared statements. The statements are included here in their entirety.

Susan Krueger, resident - statement:

1. Before the April 15 P&Z meeting began I spoke to Chair Russell Hernandez regarding the absence of my comments during the public hearing on Jesus' Caro's application for a zone change.

2. Prior to acceptance of the consent agenda, Russell addressed Larry S. telling him that my comments had been omitted and that comments by Chris A. had also been omitted. It does not appear that those minutes were corrected; however, some changes appear in the May 20 document. Re. those changes, I did ask about staff's investigation, particularly because staff thought the zone change was done recently. I did not talk about the Cotton Gin rezoning, this was Chris A.'s comment. Re. the 3rd sentence, I provided staff with the Resolution adopted in 1980 that includes a legal description (not restriction). At 18.90.070, the Code requires investigation of facts about an application.

3. Pg. 117: Description of Request: the 14 acre strip of land to the east of Mr. Caro's property does not consist of primarily one acre parcels. It consists of 3 parcels: a 5 acre, a 4 acre, and a 5 acre piece. No subdivision of the 14 acres has been approved by the Town of Mesilla. R-1 zoning has a minimum lot size of one acre; however, no maximum lot size is set in R-1 zoning. Mr. Caro's property has never been considered a part of this 14 acre strip. There is a significant bench separating his property from the last property in the 14 acres. The reason the lots have or haven't been farmed is by choice of the property owners. When water is scarce, farmers may choose to join together to create a way to get water to their farm land.

4. The Town ran a water line along the easement that abuts the 14 acres in order to loop the line into Mr. Brown's property off of Calle del Norte. No other reason was or has been given re. promotion of development or appropriateness of the road width.

5. Re. paragraph 6 in Description of Request, there are no DAC (Dona An County) maps that show one acre lots for this area. Larry Underwood created 2 surveys, one showing the 14 acres divided into 7 two acre lots and one showing the 14 acres divided one acre lots. Neither survey is signed or recorded in either the County or the Town of Mesilla.

6. Finally, on pg. 120, Chair Hernandez made two specific requests in recommending that the zone change request be postponed. I didn't see anything in the packet re. those requests.

Jesus Caro, applicant - statement:

Planning and Zoning members, As you know, I am a member of the BOT and do believe that ordinances serve a very important purpose and have always tried to abide by them. However, from time to time things come up that have different circumstances from the norm as is the case in my request and the reason that I have applied for a rezoning of my property People might say that this is a case of spot-zoning. But in all actuality, since my property is the only piece that is zoned RF and all other properties within this strip of land are zoned R1, I will be doing away with the spot zoning condition that presently exists if you go by its definition that spot zoning exists when there is a "Variation in zoning where a piece of land is zoned differently than that surrounding it."

Hence, you must be cognizant of the fact that although ordinances have been established, one must stay open - minded and realize that circumstances often change or that new conditions can arise. In those instances, fair provisions or accommodations must be made, otherwise zoning would be a " strait - jacket" and a detriment to a community instead of an asset. Experience has demonstrated that even the best zoning ordinances do become outdated. Also, sad but true, evaluation and decisions of proposed changes at times tend to be influenced by politics and/or personal biases, and can lead to unfairness when not judged on the individual merits of the case.

CASES/DECISIONS:

Z19-001 – Submitted by Jesus Caro, an application for a zone change from Rural Farm, five acre minimum lot size (RF) to Residential, one acre minimum lot size (R-1) for a 4.36 acre residential parcel located at the west end of Fresquez /Snow Road (a private easement). (A Public Hearing for this case was held by the PZHAC on April 2, 2019)

Staff explained that as Public Hearing was held for this zone change request on April 2, 2019 and the purpose of the current meeting was to make a determination on whether or not to recommend approval of the zone change request to the Bot. Commissioner Lucero stated that the Ordinance supports the greenbelt around the Town, and that the zone change would not be compatible with the Ordinance or the Comprehensive Plan. She felt the PZHAC should support the Ordinance. Commissioner Hernandez stated that the decision is only about the zone change, not subdividing the property. He also stated that the property is contiguous with the property zoned R-1, therefore it is not incompatible with adjacent properties.

A motion was made by Commissioner Prieto to approve the request and seconded by Commissioner Houston.

THE MOTION TO APPROVE FAILED BY A VOTE OF 0 – 3, AND THE ZONE CHANGE REQUEST WAS DENIED.

1. Authorize, in appropriate cases and subject to appropriate conditions and safeguards, special exceptions to the terms of the zoning ordinance or resolution:
 - a. Which are not contrary to the public interest;
 - b. Where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and
 - c. So that the spirit of the zoning ordinance is observed and substantial justice done; or
2. In conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:
 - a. Reverse any order, requirement, decision or determination of the planning, zoning and historical appropriateness commission, or official or committee thereof;
 - b. Decide in favor of the appellant; or
 - c. Make any change in any order, requirement, decision, or determination of the planning, zoning and historical appropriateness commission, or official or committee thereof. [Ord. 2009-05 § 2]

If the BOT determines that the PZHAC was in error and decides to overturn the PZHAC's decision to deny the zone change request, it will need to determine that the zone change is not sport zoning, and that the requested zoning is compatible with the Comprehensive Plan for the Town.

BOT OPTIONS:

1. Affirm the decision of the PZHAC and deny the zone change request.
2. Overturn the decision of the PZHAC and approve the zone change request.
3. Overturn the decision of the PZHAC and approve the zone change request with conditions (Conditional Zoning)

BOT ACTION: