



**THE BOARD OF TRUSTEES OF THE TOWN OF MESILLA WILL HOLD A WORK SESSION ON MONDAY, APRIL 23, 2018 AT 4:30 P.M. IN THE BOARD ROOM OF THE MESILLA TOWN HALL.**

1. The unveiling of photos donated to the Town of Mesilla in the Visitor's Center.
2. Discussion on the Town of Mesilla Preliminary Budget for FY 2018/2019. – **Cynthia Stoechner-Hernandez, Clerk/Treasurer.**

**THE BOARD OF TRUSTEES OF THE TOWN OF MESILLA WILL HOLD A REGULAR BOARD MEETING ON MONDAY, APRIL 23, 2018 AT 6:00 P.M. IN THE BOARD ROOM OF THE MESILLA TOWN HALL.**

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL & DETERMINATION OF A QUORUM**
3. **CLOSED SESSION** – pursuant to NMSA 1978 Chapter 10-15-1(H)(7): discussion related to threatened or pending litigation: Nancy Byres V. Town of Mesilla – **Nora L. Barraza, Mayor.**
4. **PUBLIC INPUT** – The public is invited to address the Board for up to 3 minutes.
5. **CHANGES TO THE AGENDA & APPROVAL**
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** – Work Session & Regular Meeting of April 9, 2018.
  - B. **\*PZHAC Case 060709** - 2650 Calle del Oeste, submitted by Henry Gil; a request for a building permit to install fascia boards on part of a porch and to allow the porch to be enclosed to block winds from the west; and to repair and repaint the trim and stucco on the dwelling at this address. Zoned: Historical Residential (HR).
7. **OLD BUSINESS:**
  - A. **\*BOT MINUTES** – Regular Meeting of March 26, 2018.
8. **NEW BUSINESS:**
  - A. A presentation/discussion by Mr. Buddy Ritter against the Food Truck Fiestas on the Plaza.
  - B. For discussion: the cell towers on the property of an approved Commercial property at 1971 Union Avenue.
  - C. For discussion/approval: approving the use of Reserve Deputies per Mesilla Town Code 2.45.040 to cover shifts due to an employee being activated by the National Guard. – **K.C. Alberg, Marshal.** (added 4/20/18 at 10:23 am)
  - D. For discussion/possible approval: a request by Judge Fietze for a pay increase for the Court Clerk.
  - E. **Resolution 2018-05:** A resolution authorizing the execution and delivery of a loan agreement between the Town of Mesilla and the New Mexico Finance Authority in the principal amount of \$169,949 for financing the purchase of Public Works Utility Vehicles and related equipment (lightbars). – **Debbie Lujan, Public Works Director.**
  - F. **Resolution 2018-06:** A resolution affirming support for the White Sands National Park Establishment Act. – **Nora L. Barraza, Mayor.**
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 48 hours 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 this agenda can be found online at [www.mesillanm.gov](http://www.mesillanm.gov). You may request to be added to the Mesilla Agenda E-Mailing list by calling or e-mailing Cynthia Stoechner-Hernandez, Clerk/Treasurer, at 524-3262 or [cynthias-h@mesillanm.gov](mailto:cynthias-h@mesillanm.gov).

Posted 4/19/18 ***revised and reposted at 10:30 am 4/20/18*** 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.



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6 **BOARD OF TRUSTEES**  
7 **TOWN OF MESILLA**  
8 **WORK SESSION**  
9 **MONDAY, APRIL 9, 2018**  
10 **5:00 P.M.**

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

17  
18 **STAFF:** Cynthia Stoechner-Hernandez, Town Clerk/Treasurer  
19 K.C. Alberg, Marshal  
20 Kevin Hoban, Fire Chief  
21 Debbie Lujan, Public Works Director  
22 Gloria Maya, Recorder

23  
24 **PUBLIC:**

- 25  
26  
27  
28 • Discussion of the Town of Mesilla Preliminary Budget for FY 2018/2019. – **Cynthia Stoechner-**  
29 **Hernandez, Clerk/Treasurer.**

30  
31 Ms. Stoechner-Hernandez presented an overview of the FY 2018-2019 Budget. A worksession will be  
32 held on April 23<sup>rd</sup> for a review of the preliminary budget. If needed, another worksession will be held on  
33 May 14<sup>th</sup> to review the preliminary budget which can then be put on the agenda for approval. Another  
34 worksession can be held if needed and we will still be able to meet the deadline.

35  
36 Mayor Barraza stated department heads were asked to submit their budgets with any cuts or additions.  
37 They were reviewed to ensure that there were no outrages requests. There were very minor modifications  
38 made to address the department's needs, they were very conservative.

39  
40 Trustee Johnson-Burick asked why the GRT for the February is so huge.

41  
42 Ms. Stoechner-Hernandez responded GRT is always 2 months behind; in February we got December's.

43  
44 Trustee Johnson-Burick stated she feels it is inaccurate that it is posted like that.

45  
46 Mayor Barraza responded that is the way the Taxation and Revenue Department has set it up.

47  
48 Ms. Stoechner-Hernandez stated March GFT is for business in January and was \$10,000 more than last  
49 year.

50  
51 Trustee Johnson-Burick asked what the COLA percentage we are looking at is.

52  
53 Ms. Stoechner-Hernandez responded she is requesting direction from the board.

1  
2 Mayor Barraza responded that would give us a base to work off; 1%, 2% or 3% for all personnel.

3  
4 Trustee Johnson-Burick stated she is conformable with a 2%

5  
6 Mayor Pro Tem Caro stated he is comfortable with a 1%.

7  
8 Trustee Arzabal stated he is glad the insurance increase is reflected in the budget. He feels the people on  
9 salary make a decent amount of money then you have staff barely making minimum wage. Department  
10 heads get paid no matter whether they work 2 hours a week or 100 hours a week. He feels the hourly  
11 employees should get a larger COLA than the salaried employees.

12  
13 Ms. Stoechner-Hernandez stated the last COLA was a 2% for hourly employees and 1% for salaried. A  
14 percentage does come out more for department heads than hourly employees.

15  
16 Trustee Garcia agrees with Trustee Arzabal.

17  
18 Trustee Johnson-Burick stated she also agrees with Trustee Arzabal.

19  
20 Trustee Caro stated he feels the COLA is much higher for the salaried than for the actual working people  
21 in Public Works. He would go for the 1% for department heads and 2% for hourly employees.

22  
23 Mayor Barraza stated the board would like to see 1% for department heads and 2% for hourly employees.

24  
25 Trustee Johnson-Burick stated she understands department heads have a lot of responsibilities than the  
26 other staff. We also need to ensure our hourly wage employees can provide for their families

27  
28 Trustee Arzabal stated he wishes everyone could get a 3%. By everyone being conservative has helped  
29 the town. It is our responsibility as a Finance Board to send a balanced budget to DFA. It is important to  
30 keep our employees happy.

31  
32 Mayor Barraza thanked the board for their comments. It is important to keep our employees happy. The  
33 Town of Mesilla is very generous in terms of benefits and fortunate that we can offer benefits to our  
34 employees. She also wishes we could give employees a higher increase. The South Central of  
35 Governments will be giving their employees a 5% COLA. Many of the entities are looking giving a 4%,  
36 5% or 6% increase. She is happy that our revenue sources have increased and we are able to continue to  
37 be conservative to prepare a balanced budget and still provide our residents benefits. Three employees  
38 will have a 5 year anniversary; 5% increase. We were advised there would be a possible 4% increase in  
39 insurances at the meeting we attended.

40  
41 Trustee Johnson-Burick stated she appreciates Ms. Stoechner-Hernandez, who tells us how it is and Ms.  
42 Maya.

43  
44 Mayor Barraza responded the facts are the facts.

45  
46 Ms. Stoechner-Hernandez asked Trustee Garcia to come by to talk to her at any time with questions or  
47 concerns because she is new to this process.

48  
49 Mayor Barraza stated we have never been rejected a budget which means the Department of Finance is  
50 comfortable with the numbers we provide. We are still projecting 2.5% increase in revenue as we have  
51 done for the last 8 years. She hasn't given up the fight with the Taxation and Revenue Department. She  
52 feels we are entitled to more GRT. Some businesses do not charge tax if the customer pays cash. She  
53 will be visiting with the legislators regarding the state looking at not charging tax on purchases under  
54 \$500 on the Saturday after Thanksgiving which would be for most of the purchases made in Mesilla.

1 Other municipalities in New Mexico will take a hit as well. She will continue pushing Taxation and  
2 Revenue to give accurate numbers. The New Mexico Municipal League which represents the  
3 municipalities has 5 or 6 lawsuits against the Tax and Revenue Department.  
4

5 **Worksession closed at 5:30 p.m.**  
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12 **BOARD OF TRUSTEES**  
13 **TOWN OF MESILLA**  
14 **REGULAR BOARD MEETING**  
15 **MONDAY, APRIL 9, 2018**  
16 **6:00 P.M.**  
17

18 **TRUSTEES:** Nora L. Barraza, Mayor  
19 Jesus Caro, Mayor Pro-Tem  
20 Carlos Arzabal, Trustee  
21 Veronica S. Garcia, Trustee  
22 Stephanie Johnson-Burick, Trustee  
23

24 **STAFF:** Cynthia Stoechner-Hernandez, Town Clerk/Treasurer  
25 K.C. Alberg, Marshal  
26 Kevin Hoban, Fire Chief  
27 Debbie Lujan, Public Works Director  
28 Larry Shannon, Community Development  
29 Gloria Maya, Recorder  
30

31 **PUBLIC:** Leila Gomez Chris Alexander  
32 Susan Krueger Arturo Jurado  
33 Yolanda Lucero Mary Dolores Taylor  
34 Xavier Lucero Mike Bell  
35

36  
37 **1. PLEDGE OF ALLEGIANCE**

38 Mayor Barraza led the Pledge of Allegiance.  
39

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

41 **Roll Call.**

42 **Present: Mayor Barraza, Mayor Pro-Tem Caro, Trustee Arzabal, Trustee Garcia, Trustee**  
43 **Johnson-Burick.**  
44

45 **3. CLOSED SESSION** – pursuant to NMSA 1978 Chapter 10-15-1(H)(2): discussion of limited  
46 personnel matters for the hiring of an employee in the Public Works Department. – **Nora L.**  
47 **Barraza, Mayor.** (added 12:51 pm 4/5/18)

1 **Motion:** To enter Closed Session pursuant to NMSA 1978 Chapter 10-15-41(H)(2): discussion of limited  
2 personnel matters for the hiring of an employee in the Public Works Department, **Moved by** Mayor Pro  
3 Tem Caro **Seconded by** Trustee Arzabal.

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

6 Trustee Arzabal Yes

7 Mayor Pro-Tem Caro Yes

8 Trustee Garcia Yes

9 Trustee Johnson-Burick Yes

10  
11 Entered Closed Session at 6:03 p.m.

12  
13 **Motion:** To close Closed Session and open Regular Meeting after discussion of limited personnel matters  
14 for the hiring of an employee in the Public Works Department ; pursuant to NMSA 1978 Chapter 10-15-  
15 41(H)(2): no action taken, **Moved by** Trustee Arzabal, **Seconded by** Trustee Garcia.

16  
17 **Roll Call Vote:** Motion passed (**summary:** Yes = 4).

18 Trustee Arzabal Yes

19 Mayor Pro Tem Caro Yes

20 Trustee Garcia Yes

21 Trustee Johnson-Burick Yes

22  
23 **Entered Regular Meeting at 6:15 p.m.**

24  
25 **4. PUBLIC INPUT** – The public is invited to address the Board for up to 3 minutes.

26 Mayor Barraza stated she will not tolerate any outbursts like there was at the last meeting. She has  
27 instructed Marshal Alberg that the person disrupting will be asked to leave and if it continues, the person  
28 will be arrested. We must treat everyone with respect.

29  
30 Mr. Alexander stated the board's responsibility is to uphold the ordinances in their entirety. Whatever the  
31 ordinance reads is what it is. If anything needs to be addressed there are other avenues that can be taken  
32 such as a Special Use Permit. The ordinances speak for themselves. At the last meeting it was said there  
33 was no Spot Zoning done; this is exactly what the board did. There is no contiguous property along that  
34 property that is not Rural Farm Zone. The board opened the door to Spot Zoning in the Rural Farm Zone.  
35 Anyone who comes forward from the Rural Farm Zone, to request a zone charge are entitled to that  
36 regardless of what the zoning is around that property. The board will be impelled to grant the request.

37  
38 Ms. Krueger stated the Wireless Telecommunication Ordinance was passed in Ordinance 2003-10; the  
39 cell towers at the gin were built after that. She read the boards duties and responsibility; gave the  
40 definition of Tort Claim. She requested that the minutes be removed from the consent agenda; motion,  
41 Mayor Barraza voted to break the tie. The information was not given to staff or Planning and Zoning.  
42 She believes the Board of Trustees must follow what they are sworn to do in their oath of office.

1 Fire Chief Hoban stated removing cell towers without an adequate replacement will have a negative  
2 impact in the town. We rely on wireless communication for emergency purposes; merchants rely on  
3 wireless communication to transact business. We need to take into consideration the impact it would  
4 have on the ability to access communication for public safety and the town's commerce.  
5

## 6 5. CHANGES TO THE AGENDA & APPROVAL

7 Trustee Garcia asked to postpone item b until the next meeting and remove the Board of Trustees'  
8 minutes from the consent agenda.  
9

10 **Motion:** To approve the agenda as amended, **Moved by** Trustee Garcia, **Seconded by** Trustee Arzabal.

11 Trustee Johnson-Burick stated she would like to separate the items for voting as she was prepared to  
12 discuss item b.  
13

14 Mayor Barraza stated Judge Frieze requested removing item b from the agenda.  
15

16 Ms. Stohner-Hernandez stated Trustee Garcia will need to amend her motion to include removing Judge  
17 Frieze's request.  
18

19 Trustee Garcia amended her motion to include the removal of item c from the agenda.  
20

21 **Amended Previous Motion:** To add removing of item b from the agenda per Judge Frieze's request,  
22 **Moved by** Trustee Garcia, **Seconded by** Trustee Arzabal.  
23

24 **Roll Call Vote:** Motion passed (**summary:** Yes = 4).  
25

26 Trustee Arzabal Yes

27 Mayor Pro Tem Caro Yes

28 Trustee Garcia Yes

29 Trustee Johnson-Burick Yes – she would like to vote on each item separate.  
30

31 **Motion:** To keep item c to allow for discussion, **Moved by** Trustee Johnson-Burick, **Seconded by** Mayor  
32 Pro Tem Caro.  
33

34 **Roll Call Vote:** Motion passed (**summary:** Yes =3; No=1).  
35

36 Trustee Arzabal Yes

37 Mayor Pro Tem Caro Yes

38 Trustee Garcia No

39 Trustee Johnson-Burick Yes  
40

## 41 6. \*APPROVAL OF CONSENT AGENDA – The Board will be asked to approve by one 42 motion the following items of recurring or routine business. The Consent Agenda is marked 43 with an asterisk \*: 44

45 Trustee Arzabal requested placing item b on the consent agenda.  
46

47 **Motion:** To approve the consent agenda as amended, **Moved by** Trustee Johnson-Burick, **Seconded by**  
Trustee Arzabal.

1 Trustee Johnson-Burick asked if staff or New Mexico Department of Transportation (NMDOT) looked at  
2 the traffic impact that Case PZHAC SUP18-001 may have on Stanford Street.

3  
4 Mr. Shannon responded staff has not looked at that. The church had been in operation for six months  
5 prior to obtaining a Special Use Permit. He did not know about the church until a sign was put up; he had  
6 not received any complaints. Traffic had been entering on University Avenue and exiting on Stanford  
7 Street.

8  
9 Mayor Barraza stated Trustee Johnson-Burick's question was if DOT will be doing a study regarding the  
10 traffic impact.

11 Mr. Shannon responded it will not be done on Stanford Street but it will be done on University Avenue.

12  
13 Trustee Johnson-Burick stated this church had been operating for 6 months without permit.

14  
15 Mayor Barraza responded once the town was notified Mr. Shannon red tagged the church.

16  
17  
18 **Roll Call Vote:** Motion passed (**summary:** Yes = 4).

19 Trustee Arzabal Yes

20 Mayor Pro Tem Caro Yes

21 Trustee Garcia Yes

22 Trustee Johnson-Burick Yes

23  
24 **A. \*BOT MINUTES** – Regular Meeting of March 26, 2018. *Removed from the consent*  
25 *agenda*

26 Trustee Arzabal requested to postpone item A until next the Board of Trustee meeting.

27  
28 **Motion:** To postpone item A until the next Board of Trustee meeting, **Moved by** Trustee Arzabal,  
29 **Seconded by** Mayor Pro Tem Caro.

30  
31 Trustee Johnson-Burick stated she will direct concerns with the minutes to Ms. Maya.

32  
33 **Roll Call Vote:** Motion passed (**summary:** Yes = 5).

34 Trustee Arzabal Yes

35 Mayor Pro Tem Caro Yes

36 Trustee Garcia Yes

37 Trustee Johnson-Burick Yes

38  
39 **B. \*PZHAC \*Case 060704** - 2551 Calle de Colon, submitted by Edna Bustamante; a request  
40 for a building permit to allow the installation of a wrought iron security door over the  
41 door to the dwelling at this address. Zoned: Historical Residential (HR) *Approved by*  
42 *consent agenda*

43 **C. \*PZHAC SUP18-001 w/conditions** – Submitted by Leila Gomez, a request for a Special Use  
44 Permit to operate a small church in a 3600 square foot metal building adjacent to a dwelling  
45 at 320 W. University Ave. Zoned: Rural Farm (RF). *Approved by consent agenda*

46  
47 **7. NEW BUSINESS:**

48 **A.** For approval: the hiring of a Maintenance/Water Operator I Worker. – **Debbie Lujan, Public**  
49 **Works Director.** (*added 12:51 pm 4/5/18*)

50 Mayor Barraza stated the committee is recommending Mr. Michael Gonzalez for Maintenance/Water  
51 Operator I.



1  
2 **Motion:** To approve the hiring of a Maintenance/Water Operator I Worker, **Moved by** Trustee Arzabal,  
3 **Seconded by** Mayor Pro Tem Caro.  
4

5 **Roll Call Vote:** Motion passed (**summary:** Yes = 5).

6 Trustee Arzabal Yes

7 Mayor Pro Tem Caro Yes

8 Trustee Garcia Yes

9 Trustee Johnson-Burick Yes  
10

11 **B.** For discussion: cell towers on the property of an approved Commercial property at 1971  
12 Union Avenue. – **A request by Mayor Pro-Tem Caro and Trustee Garcia.**

13 Trustee Garcia stated we voted to change the property from farming to commercial. Cell towers are  
14 prohibited in Commercial Zoning per Ordinance.  
15

16 Mr. Shannon responded it just says towers; does not say cell towers. He referred to page 63 in the board  
17 packet and MTC 18.54.060.  
18

19 Trustee Garcia asked if he [applicant] would have to get a Special Use Permit if he turns it into a Palm  
20 Tree since the zoning has been changed to commercial.  
21

22 Mr. Shannon responded it does not say about a change in the zoning. Only the new towers in the  
23 commercial zone would require a permit.  
24

25 Trustee Garcia stated it does not say new or old towers either.  
26

27 Mr. Shannon read section; Special Use Permit will be one of those conditions.  
28

29 Trustee Garcia stated then he would then have to apply for a Special Use Permit.  
30

31 Mr. Shannon responded that it could be interpreted that way; it would be up to the board to make that  
32 determination.  
33

34 Mayor Barraza asked where in the ordinance it says he would have to apply for a Special Use Permit if  
35 there were existing towers prior to the rezoning or after it was rezoned.  
36

37 Mr. Shannon responded it does not say that anywhere in the ordinance.  
38

39 Mayor Barraza asked Trustee Garcia if that answered her question.  
40

41 Trustee Garcia responded no and asked will he still need to apply for a Special Use Permit.  
42

1 Mr. Shannon responded there is nothing in the ordinance that says he has to. The zone change was a  
2 Board of Trustee's action and they are the ones that brought those towers into the Commercial Zone.  
3 That was not an action necessarily brought by the applicant.

4  
5 Trustee Garcia stated it would be one thing if it changed from farming to commercial with everything  
6 crossing over. We only approved the zone change without conditions.

7  
8 Mr. Shannon stated he believes there was a condition that the structures would remain.

9  
10 Trustee Garcia asked for the conditions. She believes it was only the buildings of the cotton gin.

11  
12 Mayor Barraza read the agenda item.

13  
14 Mr. Shannon asked if there was a condition on that item.

15  
16 Trustee Garcia and Mayor Barraza stated there were no conditions.

17  
18 Mr. Shannon responded he believes the Planning and Zoning approved it with conditions. He will do  
19 some research. There was a statement that the structures would remain which he understood included the  
20 towers.

21  
22 Mayor Barraza read the minutes.

23  
24 Trustee Garcia asked for the definition of structures.

25  
26 Mr. Shannon stated a structure could be a wall, building, tower; anything that is constructed on the  
27 property.

28  
29 Mayor Barraza read page 64 in their board packet; definition of structure.

30  
31 Mr. Shannon read MTC Chapter 18; definition of structures.

32  
33 Trustee Garcia stated they did not vote on conditions; they only voted on the zone change.

34  
35 Ms. Stohner-Hernandez stated the resolution does not state any conditions placed by the Planning and  
36 Zoning.

37  
38 Mayor Barraza stated there was not a motion made to remove the cell towers or to allow the towers to  
39 remain.

40  
41 Trustee Garcia stated since it is now Commercial Zone he would have to have a Special Use Permit for  
42 the towers.

43

1 Mayor Barraza stated one of the towers was pre-existing the ordinance, 2003. The newer tower does have  
2 a Special Use Permit.

3  
4 Mr. Shannon responded the first tower was constructed before the 2003 ordinance; the second was after  
5 the ordinance. Read section 18.54.030

6  
7 Mayor Barraza stated that is applicable to one of the towers.

8  
9 Mr. Shannon inaudible

10  
11 Mayor Barraza stated according to the ordinance, the tower in place prior to the ordinance is in  
12 compliance. We are talking about the tower that was put forth in 2005. Trustee Garcia's question is that  
13 when the motion was made for approval and the resolution was approved through the Planning and  
14 Zoning, nowhere did it stipulate any conditions.

15  
16 Mr. Shannon responded Planning and Zoning was aware of the towers and of the zone change; the towers  
17 would remain.

18  
19 Mayor Barraza stated the motion for a zone change was made and was approved; nothing was mentioned  
20 about the cell towers. Based on that information no conditions were made regarding the cell towers. The  
21 cell towers exist on the property; she asked Mr. Shannon if in his opinion does the applicant need to come  
22 for a Special Use Permit or does the current Special Use Permit approved in 2005 suffice to meet the  
23 requirements.

24  
25 Mr. Shannon stated he believes it was the intent of the Planning and Zoning to approve the zone change  
26 with the towers and not have the towers go through any special process.

27  
28 Trustee Garcia asked what is the answer.

29  
30 Mayor Barraza responded Mr. Shannon believes that when the Planning and Zoning approved the zone  
31 changed it was understood that the cell towers were part of the approval.

32  
33 Trustee Garcia responded they did not put that in.

34  
35 Mayor Barraza stated it was not put into the resolution.

36  
37 Mr. Shannon responded there were no conditions that they needed to go through.

38  
39 Trustee Garcia asked if it is the process to put it in; it should have been part of the official process.

40  
41 Mr. Shannon responded it could have been but it is not required. It is a recommendation made to the  
42 Board of Trustees for approval.

1 Trustee Garcia stated it was not recommended since it was not in a condition. It was only recommended  
2 to change from farm to commercial, there were no conditions.

3

4 Mayor Barraza responded there were no conditions in place. It is up to the Board of Trustees to see how  
5 they want to proceed.

6

7 Trustee Arzabal stated we are looking at the 2005 tower that is in our packet. Read section 18.54.130.  
8 He asked if that is the only way to remove the tower.

9

10 Mr. Shannon responded there are three points in the ordinances that may require removal. He does not  
11 see any legal bases for removal.

12

13 Trustee Johnson-Burick stated she is now hearing everything did not come forward in order for them to  
14 make a better decision as to how they voted. She understood the cotton gin was to remain. It sounds the  
15 towers were not part of the resolution; feels there was misinformation.

16

17 Mayor Barraza responded she disagrees as there was a lot of discussion regarding the cell towers during  
18 the last meeting.

19

20 Trustee Johnson-Burick stated we were voting on the zone change and not on the cell towers.

21

22 Mayor Barraza stated she had made a recommendation at that time to postpone action until we could iron  
23 out everything. There was a lot of discussion whether the cell towers should remain. When the motion  
24 was made no one chose to make a motion to include the cell towers or to amend the motion as to include  
25 the cell towers.

26

27 Trustee Garcia responded the cell towers were on the agenda.

28

29 Mayor Barraza responded that could have been a condition put forth by the Board of Trustees at the time  
30 of approval. There was a lot of discussion and no one felt comfortable but she did ask if the board wanted  
31 to postpone but everyone wanted to proceed. We can sit here and go around in circles all night. The  
32 board needs to decide if they want to bring the cell towers as an action item or if they need more  
33 discussion and information.

34

35 Trustee Johnson-Burick read Special Use Permit 18.85.090. By changing the zone to commercial – you  
36 cannot use a Special Use Permit or a variance in Commercial Zoning.

37

38 Mr. Shannon read section 18.54.060

39

40 Trustee Johnson-Burick stated the towers would have to be concealed and they would need another  
41 Special Use Permit.

42

43 Mr. Shannon stated this part of the ordinance applies to the tower placed in 2005.

44

1 Mayor Pro-Tem Caro stated a vote was taken and people did not know what they were voting on. Read  
2 18.6.0.210 – this is not an opinion. It specifically reads that cell towers are excluded. We have to go by  
3 the ordinance.  
4

5 Trustee Arzabal stated we are going to be going round and round. We need to give the applicant some  
6 guidance. He recommends getting an attorney opinion and he recommends Mr. John Darden. He said at  
7 the last meeting that the towers were not up for a vote it was strictly the zone change. We only need to  
8 look at one tower, 2005 application. The other tower would be grandfathered in since the ordinance was  
9 not in place at that time. Having an attorney review the case would eliminate everyone looking at it in  
10 their own way. We need to get it in writing.  
11

12 Mayor Barraza responded she would not use the word grandfathering-in; it was allowed per ordinance.  
13 We all interpret things in different ways. This is a discussion item; not an action item. She agrees with  
14 Trustee Arzabal in getting a legal opinion regarding the towers. We can send this to the New Mexico  
15 Municipal League as well. She asked the board if they are in favor of moving in that direction. She  
16 directed Mr. Shannon to contact Mr. Cervantes to see if he can get to it in a timely manner if not to ask  
17 Mr. Darden and to contact Mr. Randy VanVleck from the New Mexico Municipal League.  
18

19 Trustee Arzabal recommends having a time line so it comes back in a reasonable time.  
20

21 C. For discussion/possible approval: a request by Judge Frieze for a \$1,000 increase to his  
22 current year budget. *Removed from the agenda.*

23  
24 D. **Resolution 2018-04:** A Resolution providing for determination of reasonable notice of  
25 meetings of the Board of Trustees pursuant to the Open Meetings Act. – **Cynthia Stoehner-**  
26 **Hernandez, Clerk/Treasurer.** *Approved by consent agenda*  
27  
28

29 **8. \*STAFF REPORTS:**

30 Community Development  
31 Community Programs  
32 Finance Department  
33 Fire Department  
34 Marshal's Department  
35 Public Works Department  
36

37 **9. BOARD OF TRUSTEE COMMITTEE REPORTS**

38 Mayor Barraza stated she attend a South Central Council of Governments (SCCOG) meeting Friday.  
39 There was a speaker from Economic Development Department who gave us ideas where to look for  
40 grants. The SCCOG board approved a 5% increase for their staff. We accepted the Audit Report and  
41 budget adjustments for SCCOG. There is an MPO meeting on Wednesday at 1:00 p.m. in the Dona Ana  
42 County Chambers; Trustee Johnson-Burick, Trustee Arzabal and herself.  
43

44 **10. BOARD OF TRUSTEE/STAFF COMMENTS**

45 Fire Chief no comments.  
46

1 Marshal Alberg stated we have a deputy who has been deployed through the National Guard which can be  
2 for 30 days to two years. He will come forward to the board with a recommendation.

3  
4 Ms. Lujan no comments.

5  
6 Ms. Stoechner-Hernandez no comments.

7  
8 Trustee Johnson-Burick stated she attended the training for newly elected officials as well as Trustee  
9 Garcia and Mayor Barraza. It was a good event. She has noticed political signs around town which have  
10 been there a couple of weeks. There is a meet and greet at Salud for the District 33 candidates tonight at  
11 7:00 p.m.. She asked Ms. Stoechner-Hernandez if she has heard anything on the lending libraries.

12  
13 Mayor Barraza responded she has addressed the political signs with Mr. Shannon.

14  
15 Ms. Stoechner-Hernandez responded she has not heard anything and will get with them tomorrow.

16  
17 Mayor Pro Tem Caro stated we, the board, have to look at our ordinances and not stray away from them  
18 when making decisions. We will still continue to come up with different opinions and interpretations but  
19 we need to go by the ordinances.

20  
21 Trustee Johnson-Burick read the 2018 Final Legislative Report regarding the use of wireless in entity  
22 rights of way.

23  
24 Trustee Arzabal stated he is glad the board is moving forward in giving a small COLA increase. As a  
25 policy making board we can amend an ordinance as long as the process is follow. He has no idea why he  
26 is on the MPO Committee as the meetings are in the middle of the day; pay does not have anything to do  
27 with it. The Las Cruces Public Schools are including attendance in staff evaluations after three absences  
28 we get docked in our evaluation.

29  
30 Trustee Garcia no comment

31  
32 Mayor Barraza stated she received a phone call regarding signs on Glass Road and has addressed it with  
33 Mr. Shannon. The Town of Mesilla has an opportunity to have three votes on the MPO Board. She  
34 cannot be at all the meetings so we have the opportunity to have representation. It also gives them an  
35 inside on what is coming to the Town of Mesilla. She gives the trustees the experience of knowing what  
36 is going on with the organizations and committees the town is involved with. She cannot be at three  
37 different meetings; she needs the help of the trustees. She hopes they make their best effort to attend.  
38 This gives them a hands-on experience and to see what we can share with our constituents. She is happy  
39 to hear the board wants more information with regards to the cell towers in order to make the right  
40 decision. MOLI Training as a refresher course and for new trustees. Ms. Stoechner-Hernandez will be in  
41 attending Clerk School and a workshop on Sexual Harassment next week. There will be a worksession  
42 for the budget at the next meeting.

43  
44 Trustee Garcia stated she can substitute for a trustee who cannot make a meeting.

45  
46 **11. ADJOURNMENT**

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

48  
49 **MEETING ADJOURNED AT 7:36 PM.**

1 **APPROVED THIS 23rd DAY OF APRIL, 2018.**

2

3

4

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Nora L. Barraza

6

Mayor

7

8

9 **ATTEST:**

10

11

12

---

13 Cynthia Stoechner-Hernandez

14 Town Clerk/Treasurer

15

16

17

18

DRAFT



**APRIL 16, 2018 PZHAC CASE TO BOT**

**\*Case 060709** - 2650 Calle del Oeste, submitted by Henry Gil; a request for a building permit to install fascia boards on part of a porch and to allow the porch to be enclosed to block winds from the west; and to repair and repaint the trim and stucco on the dwelling at this address. Zoned: Historical Residential (HR) **(Discussed during Work Session)**

*The PZHAC voted 3 – 0 to recommend approval of this request to the BOT.*



**BOT ACTION FORM**  
**BUILDING PERMIT REQUEST CASE 060709**  
**[PZHAC REVIEW – 4/16/2018]**  
**STAFF ANALYSIS**

**(PZHAC decision was based on information presented during the Work Session)**

**Item:**

**Case 060709** - 2650 Calle del Oeste, submitted by Henry Gil; a request for a building permit to install fascia boards on part of a porch and to allow the porch to be enclosed to block winds from the west; and to repair and repaint the trim and stucco on the dwelling at this address. Zoned: Historical Residential (HR). **(Discussed during Work Session)**

**Staff Analysis:**

The proposed work was discussed in the PZHAC Work Session held prior to this meeting. (Please refer to the information provided in the write-up for this item in the Work Session.)

If it is determined that the construction and/or style of the enclosure and other work as proposed is architecturally appropriate or acceptable for the zoning of the area as proposed, or if an alternate solution is arrived at, then the request can proceed on the assumption that all requirements of the Code will be satisfied. The PZHAC should continue on to approve the request based on the Findings of Fact stated below.

If, on the other hand, it is determined that the enclosure and other work as proposed would not be architecturally appropriate or acceptable to the zoning of the area, and no other solution can be reached, then the PZHAC should either postpone the request further until the applicant can return with a proposal that meets the standards set forth by the PZHAC; or the PZHAC should deny the request based on the request not meeting any or all of the Findings of Fact as listed.

**Estimated Cost: @ \$200.00**

**Consistency with the Code:**

The PZHAC will need to determine that the proposed enclosure and other work, when finished, will be consistent with the following sections of the Code:

**18.06.110 Review of applications within Historical and General Commercial zones – Considerations.**

- A. All applications for work in the Historical zones and Commercial zone (not subject to administrative approval) shall be reviewed by the planning, zoning and historical appropriateness commission. The commission shall determine whether the request involved will be appropriate for the purposes of this title. If the request shall be determined to be inappropriate, the board shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the historical district generally, such application may be approved without substantial detriment to the public welfare and without substantial derogation of the intent and purposes of this title.
  
- B. In reviewing an application, the planning, zoning and historical appropriateness commission shall consider in addition to this chapter:
  - 1. The historical and literary value and significance of the site, building, or structure;
  - 2. The general design, arrangement, texture, material and color of the features, sign or billboard involved;
  - 3. The relation of such factors to similar factors or sites, buildings and structures in the immediate surroundings;
  - 4. The appropriateness of the size and shape of the building or structure in relation to:
    - a. The land area upon which the building or structure is situated;
    - b. The landscaping and planting features proposed by the applicant; and
    - c. The neighboring sites, buildings or structures within the historical district.
  - 5. The commission shall also consider the applicable zoning and other laws of the town.

- C. In recommending approval of an application the commission may impose conditions which shall be binding upon the property. Prior to approving an application subject to conditions, the commission may notify the applicant of its proposed action to solicit his opinion. The concurring vote of three members of the board shall be necessary to make a determination in favor of the applicant on any application. [Ord. 2009-05 § 2]

#### **Chapter 18.35 HR – Historical Residential Zone**

In the HR zone, there is no size limit on either the primary or secondary dwelling as long as each dwelling unit has over 4000 square feet of property is **determined to be architecturally compatible and historically appropriate for the area**, and meets building code requirements.

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 of Fact:**

- The PZHAC has jurisdiction to review and recommend approval of this request to the BOT.
- The proposed work consists of enclosing part of an existing carport and doing minor repairs to an existing dwelling on the property.
- The PZHAC has determined that the proposed work meets all applicable Code requirements.

#### **PZHAC ACTION:**

*The PZHAC determined that the proposed work is compatible with the dwelling and the area, and meets the Code, and voted 3 – 0 to recommend APPROVAL of this request to the BOT.*

#### **BOT OPTIONS:**

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

#### **BOT ACTION:**

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

OFFICIAL USE ONLY:

Case # 060709

Fee \$ 0.00

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

CASE NO. 060709 ZONE: HR CODE: ACH APPLICATION DATE: 4/5/18

Name of Applicant/Owner: Henry Gil Applicant's Telephone Number: 575-642-9548

Applicant's/Owner's Mailing Address: PO Box 1134 Mesilla N.M. City State Zip Code: 88046

Applicant's/Owner's E-mail Address: Henrygil1959@hotmail.com

Contractor's Name & Address (If none, indicate Self): SELF

Contractor's Telephone Number Contractor's Tax ID Number Contractor's License Number

Address of Proposed Work: 2650 Calle del Oeste

Description of Proposed Work: INSTALL 4 4x8 Plywoods west side of porch to block winds not complete at porch / PAINT trim of house + porch same color - brown / INSTALL RAILS ON PORCH TRIM PAINT BROWN / FIN COAT

Estimated Cost: \$200.00 Signature of Applicant: Henry O. Gil Date: 4/5/18

*by permit by council*

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  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: PZHAC REVIEW & BOT APPROVAL REQUIRED  
CID PERMIT MAY BE REQUIRED.

PERMISSION ISSUED/DENIED BY: \_\_\_\_\_ ISSUE DATE: \_\_\_\_\_

- This Application will include the following, if checked:
- 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.
  - Site Plan with dimensions and details.
  - Proof of legal access to the property.
  - Drainage plan.
  - Architectural style and color scheme – diagrams or elevations (Historical and commercial zones only).
  - 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).
  - Other information as necessary or required by the City Code or Community Development:

**PZHAC WORK SESSION**  
**4/16/18**  
**(INFORMATION PRESENTED TO PZHAC)**

Submitted by Henry Gil; a request to discuss plans to install fascia boards on part of a porch and to allow panels to be installed on the west side of an existing carport to block winds from the west; and to repair and repaint the trim and stucco on the dwelling at 2650 Calle del Oeste (Case 060709). Zoned: Historical Residential (HR).

The property is located on the west side of Calle del Oeste and is located at the west edge of the HR zoning. The property is immediately bordered to the west by an EBID irrigation ditch and a pecan grove zoned RF. Dwellings in the immediate area are a variety of styles.

The applicant would like to use plywood panels to provide a shield the west side of an existing carport on a dwelling. The carport will not be completely enclosed, and will remain open on two sides. According to the applicant, the reason for the partial enclosure is to provide some screening from the wind, which comes out of the west most times. Since the carport will not be entirely closed, it will not increase the heated/cooled area of the dwelling. The covering is to be finished to match the dwelling.

Fascia boards will be added to the carport along with some wood trim. Additionally, some cracks in the plaster covering the dwelling will be repaired, and the carport, trim and repairs will be painted to match the existing color of the dwelling.

Photos of the structure are attached. According to the applicant, the style and color of the panels to be installed will be compatible with the existing dwelling on the property. Since this construction is in a Historic zoning district, the following section of the Code applies:

**18.33.080 Historical appropriateness permit.**

A. Identification. A permit for a certificate of historical appropriateness shall be required before any of the following actions or work is undertaken: new construction, exterior alteration, demolition or removal. All work or acts of new construction or exterior alteration requiring a permit for a certificate of appropriateness shall comply with the design criteria established by the precedent styles within the development zone of the proposed work.

The applicant will be present at the work session to provide further details about the proposed construction, and will be available to answer any questions that may arise.

**PHOTO OF THE DWELLING FROM CALLE DEL OESTE RENTAL SHOWING THE CARPORT**



PHOTOS OF THE SIDE OF THE DWELLING SHOWING THE CARPORT



# Doña Ana County, NM

General Reference Maps

2014 Aerial

Addresses

County Address Points

Select Search Type:

Account Number

Enter Value:

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: [R0400445](#)

Parcel Number: 4006138100130

Owner: GIL HENRY DANIEL

Mail Address: PO BOX 1134

Subdivision:

Property Address:

Acres: 0.35





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**BOARD OF TRUSTEES  
TOWN OF MESILLA  
REGULAR BOARD MEETING  
MONDAY, MARCH 26, 2018  
6:00 P.M.**

12  
13  
14  
15  
16  
17

**TRUSTEES:** Nora L. Barraza, Mayor  
Carlos Arzabal, Mayor Pro Tem  
Jesus Caro, Trustee  
Veronica S. Garcia, Trustee  
Stephanie Johnson-Burick, Trustee

18  
19  
20  
21  
22  
23  
24

**STAFF:** Cynthia Stoechner-Hernandez, Town Clerk/Treasurer  
K.C. Alberg, Marshal  
Kevin Hoban, Fire Chief  
Debbie Lujan, Public Works Director  
Larry Shannon, Community Development Coordinator  
Gloria Maya, Recorder

25  
26  
27  
28  
29

**PUBLIC:** Tom Townsend Ella Nelson  
Natalie B. Ogaz Yolanda Lucero  
Chris Alexander Pete Jurado

30  
31  
32

**1. PLEDGE OF ALLEGIANCE**

Mayor Barraza led the Pledge of Allegiance.

33  
34

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

**Roll Call.**

35  
36  
37

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

38  
39  
40  
41

**3. CHANGES/APPROVAL OF THE AGENDA**

**Motion: To approve the agenda, Moved by Trustee Johnson-Burick, Seconded by Mayor Pro Tem Arzabal.**

42  
43  
44  
45  
46  
47  
48

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

**Mayor Pro Tem Arzabal Yes**

**Trustee Caro Yes**

**Trustee Garcia Yes**

**Trustee Johnson-Burick Yes**

49  
50  
51

**4. PUBLIC INPUT** – The public is invited to address the Board for up to 3 minutes.  
Mr. Townsend gave a review on Trap, Neuter and Return.

1 Mayor Barraza stated no decision can be made since it is not an agenda item. He can be placed on the  
2 agenda for next meeting. She would like to meet with Mr. Townsend and Marshal Alberg prior.

3  
4 Mr. Townsend asked this would need board approval.

5  
6 Mayor Barraza responded she would like to see what he is requesting and would like to run it through  
7 Marshal Alberg since he is the one that deals with Animal Control.

8  
9 Mr. Townsend stated the marshal was kind enough to write a letter of support of the grant; we included  
10 the Town of Mesilla in the grant as well. He would like to leave the flyers so that the Public Works staff  
11 could distribute them to the residents.

12  
13 Mayor Barraza asked him to leave his contact information with Ms. Stoechner-Hernandez and she will  
14 contact him on Wednesday.

15  
16 Ms. Krueger stated Ms. Markman is an extraordinary animal care taker.

17  
18 Ms. Anne Markman stated she has worked with Marshal Mangusing in the past with the Trap, Neuter and  
19 Return program.

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

24 **Motion: To approve the consent agenda, Moved by Mayor Pro Tem Arzabal, Seconded by Trustee**  
25 **Johnson-Burick.**

26  
27 **Roll Call Vote: Motion passed (summary: Yes = 4).**

28 **Mayor Pro Tem Arzabal Yes**

29 **Trustee Caro Yes**

30 **Trustee Garcia Yes**

31 **Trustee Johnson-Burick Yes**

32  
33 **a. \*BOT MINUTES – Regular Meeting of Monday, March 12, 2018. *Approved by consent***  
34 ***agenda***

35  
36 **b. \*PZHAC Case 060660 - 2729 Calle de San Albino, submitted by Natalia Bustamante; a**  
37 **request for a demolition permit to demolish a dwelling on this property. Zoned: Historical**  
38 **Residential (HR). *Approved by consent agenda***

39  
40 **c. \*PZHAC Case 060694 - 1985 Calle de Colon, submitted by David and Sylvia Fierro; a**  
41 **request for a building permit to allow the replacement of windows on a dwelling at this**  
42 **address, along with the provision for a water heater to be added to the exterior the dwelling.**  
43 **Zoned: Historical Residential (HR). *Approved by consent agenda***

44  
45 **d. \*PZHAC Case 060699 – 2840 Calle Tercera, submitted by Jack and Lisa Kirby; a request**  
46 **for a building permit to allow construction of a single-family dwelling at this address. Zoned:**  
47 **Historical Residential (HR). *Approved by consent agenda***

48  
49 **e. \*PZHAC Case 060700 - 2410 Calle de Parian, Suite C, submitted by Samuel Garcia for Four**  
50 **of a Kind Ventures, LLC DBA “Adobe Modern”; a request for a sign for a shop to be located**  
51 **at this address. Zoned: Historical Commercial (HC). *Approved by consent agenda***



1           **6. NEW BUSINESS:**

2  
3           **\*\*\*A public hearing will be held prior to action on agenda item “6 (a)” \*\*\***

4  
5           **Motion: To close regular meeting and open Public Hearing, Moved by Trustee Johnson-Burick,**  
6           **Seconded by Mayor Pro Tem Arzabal.**

7  
8           **Roll Call Vote: Motion passed (summary: Yes = 4).**

9           **Mayor Pro Tem Arzabal   Yes**

10          **Trustee Caro    Yes**

11          **Trustee Garcia   Yes**

12          **Trustee Johnson-Burick   Yes**

13  
14          **Open Public Hearing at 6:11 p.m.**

15  
16          Mr. Shannon gave a review of Case Z17-001.

17          -PZHAC met on August 21<sup>st</sup>

18          -Discussion of towers, Comprehensive Plan, effect on surrounding property

19          -Applicant has two cotton gins on the property

20          -Spot Zoning issue; obtained legal opinion

21          -Towers prohibited

22          -Code as written required that a public hearing be held

23          -Legal interpretation addressed the Spot Zoning and not the towers

24          -Code requires every use of a C zone is heard by PZHAC

25  
26          Mr. Alexander stated Spot Zoning is zoning that has been changed with the surrounding abutting  
27          property. The property that is in question is in Rural Farm Zone and does not meet Commercial Zone.  
28          What is across the street has nothing to do with Mesilla. The regulations for Mesilla stand in Mesilla; the  
29          regulations for Las Cruces stand in Las Cruces. There was a reason for layered zoning in Mesilla starting  
30          with Rural Farm, Rural Agriculture and Rural Housing to Historic District. The restrictions in Rural  
31          Farm Zone are the most restricted toward development; they were intended to help maintain the rural  
32          atmosphere for agricultural purposes. The gin came into being when it was zoned Rural Farm and used  
33          for farm production. If the board allows the Rural Farm Zone to open up from the most restricted to the  
34          most lucrative zone you would open the door for any farm to apply for a Commercial Zone. They could  
35          not be denied. Mr. Jurado knew what he bought when he bought it. The presentation by staff that it  
36          meets the criteria is false. He does not understand their interpretation. When something is conjoining;  
37          one property to another in the same zone and change one property within a cluster of the zone – that is  
38          Spot Zoning. The PZHAC approved Spot Zoning. The attorney wrote a letter saying that it would be  
39          Spot Zoning and advised against it. Staff has misled the board because this is the only way the Spot  
40          Zone can occur; all property around it will be Rural Farm. There is not even a designated use that is  
41          being asked for. For a zone change there must be justification. He strongly advises the board not to  
42          approve a zone change. It could eventually become a Commercial Zone when infield from the inside fills  
43          out. It would be a destruction of Mesilla; we would not have any agricultural buffers remaining. Calle de  
44          Norte will ask for a Commercial Zone change. It will be the death of the Rural Farm Zone regarding  
45          protection. It will open up the areas to the possibility of being changed to commercial. He believes  
46          farmers will begin to sell acreage since commercial property in Mesilla is in excess of a \$1 million an  
47          acre. There will not be any preservation for Mesilla because we will not have any buffers. This will be at  
48          an entry point opening up zoning that should not be allowed until it is built from the center of the core  
49          out.

50  
51          Ms. Nelson stated she is confused since it is about a zone change; agricultural to commercial. Our town  
52          ordinances override any zoning requests. She would like for someone on the board to explain how this  
53          zoning change can be considered under our current ordinances. In the 80's there was an individual who

1 bought Mesilla property and developed Mesilla Farms area. He came for a zone change, the board held  
2 out so he sued the town saying our ordinances were unconstitutional. Our ordinances were up held in  
3 court. Our ordinances were established by the people who incorporated the town with long range  
4 thinking. For the history, the ambience, for whatever it is in our heart and soul call Mesilla. For each of  
5 us it is different but we all here together; we all care. She is concerned that the PZHAC has presented this  
6 to the board. She asked if they read the ordinance regarding changing zones. She heard on the streets that  
7 the towers could be grandfathered in. Grandfathered-In means things that were here before the  
8 ordinances. She asked the board to read the ordinances, understand that that is the law of the town. She  
9 would like for someone to explain to her how the PZHAC came up with the recommendation and how  
10 staff, knowing the codes and ordinances, agreed that it could be taken to the trustees. There was another  
11 property owner on Motel Boulevard who wanted to develop farm land into a housing division which did  
12 not pass. It is hard for property owners. We have to decide if we want farmland and ambience or do we  
13 want to have houses. The ordinance will need to be changed at that point. She ask that the board to read  
14 the ordinances and understand why they are there and implement them.

15  
16 Mayor Barraza stated the board will not answer during a public hearing.

17  
18 Ms. Krueger stated she researched in the first zoning ordinance when the gin was brought into Mesilla  
19 under Rural Farm. This ordinance was passed in 1974. There was a clear distinction between Industrial  
20 Use and Commercial Use. There was confusion as it was presented to the PZHAC that the use of the  
21 property had always been commercial which it was not. Spot Zoning should be consistent with the  
22 Comprehensive Plan. Also there is confusion regarding the timeframe on the letter sent by Mr. Cervantes  
23 that came to the town in October, 2017 but was first mentioned and distributed in March, 2018. She  
24 understands that he referenced Spot Zoning but nothing to do with the decision that whether or not it was  
25 appropriate to make a rezone decision. She could not find land uses outside the town's boundary to  
26 justify a zone change in the ordinances. The New Mexico Municipal League put together a Cell Tower  
27 Ordinance that was appropriate for communities across the board. There have not been any amendments  
28 but recommends reading the ordinance to see if there have been changes.

29  
30 Ms. Krueger stated it prohibits expressly which means without ambiguity; does not apply to this kind of  
31 activity. This has to do with safety. If the thought that the tower will never fall down were true then it  
32 would never have been in the ordinance. She recommends the board read the ordinance carefully. The  
33 trustees took an oath of office to uphold the ordinances of the Town of Mesilla. There is no escaping the  
34 Cell Tower ordinance and how it applies to a commercial property; whether it starts as commercial or  
35 there is a request to rezone the property. She did not see a current survey or plan of the lot. The old plat  
36 did not show the Cell Towers which has to have designated access. Now there are two Cell Towers on  
37 the property. There are other uses such as special and unclassified that could be considered for this  
38 property. Mr. Shannon noted in his paperwork that the uses had not been considered. The applicant  
39 changed the application into a Zone Change almost immediately so Mr. Shannon was unable to look at  
40 the other uses. She asked that the board deny the zone change request and change the ordinance if there is  
41 a problem. This would set a precedent which could be dangerous to the town's future zoning. When you  
42 speak out against something it is incumbent to offer something that is positive. Recommends sending it  
43 back to PZHAC so they can explore all the other possibilities for development under Chapter 18.55. It is  
44 not possible to ignore the Cell Tower ordinance. The town must uphold the ordinance.

45  
46 Mr. Arturo Jurado stated we provided a space for the cell towers are on the property since the Town of  
47 Mesilla did not want them. We got a Special Use Permit, so they are there legally. There is a cell tower  
48 at Avenida de Mesilla and Valley Drive, in the middle of town, which is safe and not going to fall. We  
49 have seven acres and they are not going to fall. He thinks they are safe. Ms. Krueger keeps saying there  
50 are other things that can be done on the property. It is easy for her when you don't need to make a living.  
51 The gin has been there since 1934 and you cannot say it was farming; it never has been. What else can  
52 we do, we do not have water rights on that property. Mr. Bustamante wanted to sell produce on the

1 property which could be considered farming; he had to get a Special Use Permit. There are some  
2 regulations in Rural Farming that are ridiculous.

3  
4 Mr. Jurado continued: we have looked at different avenues that would make us any money. We store our  
5 equipment there but he will not be surprised if they are told that even that is not legal. We cannot be  
6 restricted so much just because some residents don't like the idea of being zoned different from what they  
7 want. He asked that the board consider their request. He has been after this zone change since Ms. Rader  
8 was the mayor; how long do they have to wait. They keep the place clean and have done everything  
9 possible and requested from the town. We will not be putting anything that is illegal on the property. We  
10 are at a loss at what to do. We have been asked to show a drawing of what is going to be done but we are  
11 not going to spend money on that until we are granted a zone change. He assured the board that nothing  
12 will be built without their approval.

13  
14 **Motion: To close Public Hearing and open regular meeting, Moved by Trustee Johnson-Burick,**  
15 **Seconded by Trustee Caro.**

16  
17 **Roll Call Vote: Motion passed (summary: Yes = 4).**

18 **Mayor Pro Tem Arzabal Yes**

19 **Trustee Caro Yes**

20 **Trustee Garcia Yes**

21 **Trustee Johnson-Burick Yes**

22  
23 **Entered regular meeting at 6:53 p.m.**

- 24  
25 a. For approval: **PZHAC Case Z17-001 – 1971 Union Avenue** (the NE Corner of Avenida de  
26 Mesilla and Union Ave), submitted by Arthur and Pete Jurado; a request for a Zone Change  
27 from Rural Farm (RF) to General Commercial (C) for a seven-acre property at this address. –  
28 **Larry Shannon, Community Development Coordinator.**

29 **Motion: To approve PZHAC Case Z17-001 – 1971 Union Avenue (the NE Corner of Avenida de**  
30 **Mesilla and Union Ave), submitted by Arthur and Pete Jurado; a request for a Zone Change from**  
31 **Rural Farm (RF) to General Commercial (C) for a seven –acre property at this address, Moved by**  
32 **Mayor Pro Tem Arzabal, Seconded by Trustee Johnson-Burick.**

33  
34 Mayor Pro Tem Arzabal stated he is not going to get into it with Mr. Alexander but the letter was dated  
35 October 2<sup>nd</sup> and not August, that is why he shook his head. The cell towers are not up for a vote; we are  
36 voting on the zone change. The applicant will need to come back to address the cell towers.

37  
38 Mayor Barraza responded in the event the zone change is approved; if the cell towers are not allowed in  
39 the Commercial Zone then they will need to come down. They would need to come in for a Special Use  
40 Permit or a variance depending on the ordinances.

41  
42 Mayor Pro Tem Arzabal stated anybody can ask for a zone change. The board will have a say on what  
43 can be on that property. The board (finance) can only count on Gross Receipt Taxes, Municipal Court,  
44 taxes and permits. Mayor Barraza has asked the board to get creative in bringing revenue to the town.  
45 Whatever is built on that property will create new revenue to the town; it is currently not creating any  
46 revenue as is. The Planning and Zoning has made their recommendation.

47  
48 Mr. Shannon inaudible

49  
50 Trustee Johnson-Burick stated she wants nothing more than for that property to generate revenue for the  
51 town. She appreciates the work the Planning and Zoning has done with this case. She asked about  
52 procedural items: 1) Public Hearing posting was dated August 5<sup>th</sup>, 2) Zone Change Application was dated

1 August 10<sup>th</sup>, 3) Public Hearing notice was for August 21<sup>st</sup>. Without an application being submitted how  
2 did someone know to post for a zone change in advance?  
3

4 Mr. Shannon responded the applicant came in prior to the request for the SUP (meaning zone change).  
5 There was a worksession to discuss what could be done on the property. It was found that a variance  
6 would not be allowed. He read the requirements from the town code regarding SUP (meaning zone  
7 change). Applicant turned in application on August 10<sup>th</sup> however, he dated incorrectly.  
8

9 Trustee Johnson-Burick asked why we differed to something different.  
10

11 Mr. Shannon stated he does not have a good answer. Typically he uses the date when the applicant pays  
12 for the permit.  
13

14 Trustee Johnson-Burick responded we had it posted August 5<sup>th</sup> and the application was dated five after the  
15 posting went out that there was going to be a request for a zone change. It does not lend itself to a lot of  
16 transparency. She researched the agendas and minutes from the Planning and Zoning.  
17

18 Mr. Shannon responded he will need to do some research.  
19

20 Trustee Johnson-Burick read ordinances 18.05, 18.05.060 and 18.05.080. The resolution in our packet  
21 was dated March 5<sup>th</sup>.  
22

23 Mr. Shannon responded there was a Public Hearing and typically a decision is made then or at the next  
24 meeting. They did not have a legal opinion as to the towers so they determined to postpone a decision on  
25 the case until they had the information.  
26

27 Trustee Johnson-Burick stated the information was addressed in the October letter from Mr. Cervantes.  
28 She asked why there was such a lapse of time before it was brought to the board.  
29

30 Mr. Shannon responded we were waiting for an answer on the cell towers.  
31

32 Trustee Johnson-Burick stated and we still don't have an answer.  
33

34 Mr. Shannon responded they decided to hold a meeting without the answer to come up with a decision so  
35 not to keep Mr. Jurado waiting.  
36

37 Trustee Johnson-Burick read Ordinance 18.05.100. She does not feel the 15 days were awarded.  
38

39 Mr. Shannon read Ordinance 18.90.  
40

41 Trustee Johnson-Burick responded it still needs to go to the trustees.  
42

43 Mr. Shannon stated 18.9.050 does not state that. He agrees it does say 15 days. That was done at the  
44 Planning and Zoning. Read the ordinance.  
45

46  
47 Trustee Johnson-Burick stated she is at ordinance 18.05.100.  
48

49 Mr. Shannon stated he is reading ordinance 18.90.140.  
50

51 Mayor Barraza stated the resolution is dated March 15<sup>th</sup> the actual date the Planning and Zoning made  
52 recommendation.  
53

1 Trustee Johnson-Burick asked if the resolution was posted indicating the Board of Trustees was holding a  
2 Public Hearing which requires 15 days.

3  
4 Mr. Shannon responded the section he is using does not have requirements for Public Hearing by the  
5 Board of Trustees.

6  
7 Trustee Johnson-Burick responded she is using the General Provisions – Special Use Permit that does not  
8 apply. She asked why we have contradicting ordinances.

9  
10 Mr. Shannon stated the section being referred to by Trustee Johnson-Burick is from the Comprehensive  
11 Plan. He is using the ordinance for a zone change.

12  
13 Trustee Johnson-Burick asked based on that, was there adequate notice.

14  
15 Mr. Shannon responded adequate notice was given based on the code.

16  
17 Trustee Johnson-Burick asked what about the trustees.

18  
19 Mr. Shannon responded the code does not require a Public Hearing by the Board of Trustees.

20  
21 Trustee Johnson-Burick stated she wants to make note of the procedural things that she has concern with  
22 to be reviewed. Read ordinance 18.46. It also says that restaurants are permitted in the R code for  
23 industrial use. She wants nothing more than to see this property vibrant and bringing revenue to the  
24 community to help address our needs. She made a commitment that she would protect the greenbelt that  
25 sets us apart from other communities that our fore fathers have blessed us with. She would entertain a  
26 Special Use Permit. It is all green on the buffers on the Comprehensive Plan. There is only one piece  
27 that is purple which is industrial. We could use an ordinance such as 18.85.090. We will not be able to  
28 use Special Use Permit or a variance. She does not think a zone change is the answer. We need to revisit  
29 the ordinances. We have a hardship for this property. We need to look at a Special Use of Variance as to  
30 not set precedent.

31  
32 Trustee Caro stated no matter how you look at it, it will be Spot Zoning. He cannot see how this can go  
33 through. Nothing has been completed since it reads “and”. This needs to go back to the Planning and  
34 Zoning and should be tabled until more research has been done. There are too many holes; we could be  
35 opening up the flood gates. He is reluctant at this time.

36  
37 Trustee Garcia stated this letter from Mr. Cervantes was from October. She asked Mr. Shannon if he  
38 emailed Mr. Cervantes for answers because he did answer any of questions.

39  
40 Mr. Shannon responded we met several times.

41  
42 Trustee Garcia asked what he said.

43  
44 Mr. Shannon responded the information is in the packet.

45  
46 Trustee Garcia responded Mr. Cervantes did not answer any of the questions. You sat on it since you got  
47 it in October.

48  
49 Mr. Shannon stated it was in March.

50  
51 Trustee Garcia stated the letter was from October. There is no clarification on the questions you asked  
52 Mr. Cervantes. She agrees it needs to go back to Planning and Zoning.

53

1 Mayor Barraza asked if Trustee Caro wants to make a motion to postpone or go forward.  
2 Trustee Caro responded we can go forward but he does not feel comfortable voting for it.

3  
4 Mayor Barraza asked what the wishes of the board are.

5  
6 Trustee Johnson-Burick responded she would like to work with the applicant to prevent a flood gate from  
7 opening. She asked is there something we can do through ordinance.

8  
9 Mayor Barraza responded we cannot hold up a case because we want to change the ordinance to make  
10 things right.

11  
12 Mayor Pro Tem Arzabal responded if we are we sending it back to Planning and Zoning then what  
13 direction are we going to give them. The letter does address Spot Zoning and does not address the cell  
14 towers. He understands they would need to go other avenues for the cell towers. He does not feel this  
15 should go back to the Planning and Zoning; they have done their job. We need to give the applicant some  
16 direction. The cell towers in his opinion will need a variance.

17  
18 Mayor Barraza stated Mr. Cervantes letter dated October 2, 2017 has a conclusion on page 16 [in the  
19 board packet] answering the questions.

20  
21 Mr. Jurado stated there is a Special Use Permit for both of the towers. He asked why we have to do it  
22 again.

23  
24 Mayor Barraza responded cell towers are in permitted in the RF Zone so why did they have to have a  
25 Special Use Permit.

26  
27 Mr. Jurado stated the prior administration told them they needed a Special Use Permit.

28  
29 Mr. Shannon responded that is the way the ordinance is written. The ordinance does require a Special  
30 Use Permit.

31  
32 Mayor Barraza asked if the property is rezoned will they need to go for a Special Use Permit.

33  
34 Mr. Shannon responded that will need to be determined by the trustees.

35  
36 Mayor Barraza stated the process was followed correctly. The applicant asks why they would need to go  
37 through the process again for the towers.

38  
39 Ms. Nelson stated Mr. Jurado will either have to move the towers or request another Special Use Permit  
40 since towers are not allowed in the Commercial Zone. She does not feel Planning and Zoning did an  
41 adequate job when they agreed that this case could come to the board. There are a lot of questions and  
42 issues that have not been answered. Now you say it cannot go back to the Planning and Zoning since they  
43 already worked on it, she does not believe they worked on it enough. The ordinances are the legal basis  
44 in which this land was built. Zoning comes under the ordinances, the ordinances does not come under  
45 zoning. She understands the issue but it is a question do we want to maintain what we can and what we  
46 have or do we just open it up. Everyone can make a request for a zone change; her point was that does  
47 not mean you are allowed or entitled to have it. Our ordinances have been challenged in court and have  
48 held up. She asked the board to read the ordinances

49  
50 Mayor Pro Tem Arzabal asked if this is approved will it become a non-conforming.

51  
52 Mr. Shannon read section 18.54.63.

53

1 Mayor Barraza stated she would like to have a worksession to help the board make a wise decision.

2  
3 Trustee Johnson-Burick stated she is ready to vote on the zone change.

4  
5 **Roll Call Vote: Motion passed (summary: Yes = 3; No=2).**

6 **Trustee Caro No**

7 **Trustee Johnson-Burick No**

8 **Mayor Pro Tem Arzabal Yes**

9 **Trustee Garcia Yes**

10 **Mayor Barraza Yes - mentioned with conditions set forth by the Planning and Zoning**

11  
12 Mayor Barraza stated whatever is being proposed for the property must come to the Planning and Zoning  
13 and the Board of Trustees. The Jurado's will do what is right and fitting for the Town of Mesilla.

14  
15 Moving on in the agenda: Mayor Barraza stated these appointments are for the different committees and  
16 organizations around the community. It is crucial and important that we have representation at these  
17 meetings. If the appointee cannot attend they are to contact the alternate. Some of these organizations  
18 will drop us if we do not have representation at the meetings.

- 19  
20 **a. Appointment of representative(s) to the Southwestern Area Workforce Development Board -**  
21 **Nora L. Barraza, Mayor**

22 Nora L. Barraza

23 Carlos Arzabal, Alternate

- 24 **b. Appointment of representative(s) to the South Central Council of Governments, Inc. - Nora**  
25 **L. Barraza, Mayor**

26 Nora L. Barraza

27 Carlos Arzabal, Alternate

- 28 **c. Appointment of representative(s) to the Lower Rio Grande Water Users Organization - Nora**  
29 **L. Barraza, Mayor**

30 Jesus Caro

31 Debbie Lujan

- 32 **d. Appointment of representative(s) to the Metropolitan Planning Organization (MPO) - Nora**  
33 **L. Barraza, Mayor**

34 Carlos Arzabal

35 Stephanie Johnson-Burick

36 Nora L. Barraza

- 37 **e. Appointment of representative(s) to the South Central Regional Transit District (RTD) -**  
38 **Nora L. Barraza, Mayor**

39 Veronica S. Garcia

40 Nora L. Barraza

- 41 **f. Appointment of representative(s) to the MPO Technical Advisory Committee - Nora L.**  
42 **Barraza, Mayor**

43 Larry Shannon

44 Debbie Lujan

45 Jack Younker

- 46 **g. Appointment of a representative(s) to the Viva Dona Ana/Camino Real Consortium – Nora**  
47 **L. Barraza, Mayor**

48 Stephanie Johnson-Burick

49 Veronica S. Garcia, Alternate

- 50  
51 **h. Appointment of a representative(s) to the Mesilla Valley MPO Bicycle Committee – Nora L.**  
52 **Barraza, Mayor**

53 Ashley Curry

1 Lance Shepan

2  
3 Mayor Barraza stated the majority of the meetings are held during the day. As a trustee we made a  
4 commitment to represent the town as well as be at all of the town events and committees. Some of the  
5 meetings are monthly or quarterly. The stipends that the trustees receive are to help compensate the time  
6 taken for these meetings or events.

7  
8 **Motion: To approve appointment of representatives to the committees, Moved by Trustee Johnson-**  
9 **Burick, Seconded by Mayor Pro Tem Arzabal.**

10  
11 **Roll Call Vote: Motion passed (summary: Yes = 4).**

12 **Mayor Pro Tem Arzabal Yes**

13 **Trustee Caro Yes**

14 **Trustee Garcia Yes**

15 **Trustee Johnson-Burick Yes**

16  
17 Mayor Barraza stated she will have Ms. Stoechner –Hernandez forward the committee information to the  
18 trustees. She will also notify the committees of the appointment.

- 19  
20 i. Appointment of a Mayor Pro-Tem to serve for one year pursuant to MTC 2.15.060 – **Nora L.**  
21 **Barraza, Mayor**

22 **Motion: To approve appointment of Jesus Caro as Mayor Pro-Tem to serve for one year pursuant**  
23 **to MTC 2.15.060, Moved by Trustee Garcia, Seconded by Mayor Pro Tem Arzabal.**

24  
25 **Roll Call Vote: Motion passed (summary: Yes = 4).**

26 **Mayor Pro Tem Arzabal Yes**

27 **Trustee Caro Yes**

28 **Trustee Garcia Yes**

29 **Trustee Johnson-Burick Yes**

- 30  
31 j. Submission of names of persons who shall fill the appointive offices of the Town pursuant to  
32 MTC 2.10.060 and section 3-88-33 NMSA 1978 - **Nora L. Barraza, Mayor**

33 **Motion: To approve the submission of names of person who shall fill the appointive offices of the**  
34 **Town pursuant to MTC 2.10.060 and section 3-88-33 NMSA 1978, Moved by Mayor Pro-Tem**  
35 **Arzabal, Seconded by Trustee Johnson-Burick.**

36  
37 Mayor Barraza read the list of names being submitted to fill appointive offices.

38  
39 **Roll Call Vote: Motion passed (summary: Yes =3; No=1).**

40 **Mayor Pro Tem Arzabal Yes**

41 **Trustee Caro Yes**

42 **Trustee Garcia No**

43 **Trustee Johnson-Burick Yes**

- 44  
45 k. Submission of names of persons who shall be employed by the Town pursuant to MTC  
46 2.10.060, and section 3-88-33 NMSA 1978 – **Nora L. Barraza, Mayor**

47  
48 Mayor Barraza read the list of names being submitted who shall be employed.

49  
50 **Motion: To approve the submission of names of persons who shall be employed by the Town**  
51 **pursuant to MTC 2.10.060 and section 3-88-33 NMSA 1978, Moved by Trustee Johnson-Burick,**  
52 **Seconded by Mayor Pro-Tem Arzabal.**



1 Trustee Johnson-Bruick asked when we approved him [referring to Ryan Nanez].

2  
3 Marshal Alberg responded he was presented in closed session. He was previously a reserve.

4  
5 **Roll Call Vote: Motion passed (summary: Yes =3; No=1).**

6 **Mayor Pro Tem Arzabal Yes**

7 **Trustee Caro Yes**

8 **Trustee Garcia No**

9 **Trustee Johnson-Burick Yes**

10  
11 **7. BOARD OF TRUSTEE/ STAFF COMMENTS**

12 Trustee Garcia no comments.

13  
14 Mayor Pro Tem Arzabal asked when the vacant jobs in public works are going to be filled.

15  
16 Mayor Barraza responded Ms. Lujan is setting up interviews.

17  
18 Trustee Johnson-Burick asked what is being done to address Judge Frieze's letter and what the backlog  
19 that needs to be address is.

20  
21 Ms. Stoeher-Hernandez stated she does not know what the backlog is; she will have to ask him. She told  
22 him he has the option to adjust from operations and move money into overtime. She is waiting to hear  
23 back from him.

24  
25 Trustee Caro no comment

26  
27 Mayor Barraza stated the Newly Elected Workshop is April 7<sup>th</sup>. She strongly encourages all the trustees  
28 to attend MOLI institute and Newly Elected Workshop to acquire their certification. She wishes the  
29 legislators would make it mandatory for all elected officials to obtain their certification. The town will  
30 pay per diem, registration fee, lodging and fuel. The trustees have been provided with a copy of the  
31 ordinance regarding the responsibility of a trustee. A survey was sent regarding Las Colonias to all the  
32 residents and we received 42 responses last summer. This is something the board will need to decide if it  
33 is something they wish to pursue. Marshal Alberg has been working with organizations on Animal  
34 Control. We need to update our Animal Control ordianance. We get several complaints from residents  
35 regarding feral cats.

36  
37 Mr. Townson gave an overview of the Vaccinate, Neuter and Chip program.

38  
39 Mayor Barraza stated she looks forward to meeting with Mr. Townson. She would like to schedule a  
40 meeting next week since it is something we are very interested in.

41  
42 Mr. Tomson stated the town's current ordinance does not come close to reflecting what the National  
43 Animal Laws recommend. He recommends that the town puts pressure on the new Animal Shelter  
44 Director Mr. Thacker to be on the review committee as everything we do revolves around the shelter.

45  
46 Mayor Barraza stated we need to educate our residents is a key important element.

47  
48 **8. ADJOURNMENT**

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

50  
51 **MEETING ADJOURNED AT 8:01 P.M.**

52  
53 **APPROVED THIS 23rd DAY OF APRIL, 2018.**

1  
2  
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5  
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7  
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11  
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14  
15  
16

---

Nora L. Barraza  
Mayor

**ATTEST:**

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Cynthia Stoeher-Hernandez  
Town Clerk/Treasurer

DRAFT

## **Cynthia Stoechner-Hernandez**

---

**From:** Buddy Ritter <buddyritter@zianet.com>  
**Sent:** Monday, April 16, 2018 2:02 PM  
**To:** irenep@mesillanm.gov  
**Cc:** chalas.woodfiregrill@gmail.com; a-Harrell Jerry; Hutchinson Tom  
**Subject:** Against Food Trucks

**Irene**

**I would like for you to add to the Trustees agenda the Food Truck's on the Plaza issue.**

**It is a terrible thing to do to the Restaurants of Mesilla. There is not one restaurant owner who approves of the ridiculous idea.**

**We should have the right to tell the Trustees how terrible this is to those who pay the taxes, licenses and fees to the Town of Mesilla.**

**Most of the restaurants do not have the opportunity to have Plaza locations yet the Town of Mesilla is giving it to the Food Trucks.**

**There is not a town in New Mexico who is so opposed to the Businesses in their community as The Town of Mesilla.**

**The Town is short on money yet it is doing everything it can to reduce the sales of those doing business in Mesilla that are paying the taxes. The parking situation is critical yet the Plaza is frequently blocked to parking as are adjoining streets.**

**Since you are Special Events Coordinator you should help the businesses to succeed and prosper so that they can pay more taxes.**

**Please copy this email for each of the Trustees.**

**Buddy Ritter  
Double Eagle and Peppers on the Plaza**

## Cynthia Stoechner-Hernandez

---

**From:** Town of Mesilla <irenep@mesillanm.gov>  
**Sent:** Tuesday, April 17, 2018 8:10 AM  
**To:** Nora L. Barraza; Cynthia Stoechner-Hernandez  
**Subject:** Fwd: Food Trucks

**Irene E. Parra**  
Special Events Coordinator  
2231 Avenida de Mesilla  
Mesilla, NM 88046  
(575)524-3262 ext. 116  
(575)571-3890 - cell



----- Forwarded message -----

**From:** Tom Hutchinson <[Tom@laposta-de-mesilla.com](mailto:Tom@laposta-de-mesilla.com)>  
**Date:** Tue, Apr 17, 2018 at 7:57 AM  
**Subject:** Food Trucks  
**To:** "[irenep@mesillanm.gov](mailto:irenep@mesillanm.gov)" <[irenep@mesillanm.gov](mailto:irenep@mesillanm.gov)>  
**Cc:** Jerean Hutchison <[jerean@zianet.com](mailto:jerean@zianet.com)>

Good morning Irene...Jerean and I once again oppose the dedicated Food Truck events you have planned for the Plaza. While we understand food vendors being a part of Fiestas and related events, having an event specifically for food trucks parked a few feet outside restaurants on the plaza makes no sense.

Let's recognize these food trucks park during our prime business hours for a small fee with some using electricity and other services provided by the town. Your restaurants in and around the plaza have real mortgage payments, bills, and staff to support....not to mention the GRT we collect for you....which is diminished when you allow for competition at a significantly lower operating cost and investment, to park a few feet from our front doors.

Regarding the argument that food trucks are a low cost food option...not so sure about that premise.....I suggest you can get a burrito, quesadilla, churro, as examples, at La Posta for similar IF NOT LOWER pricing.

We continue to support food truck events at a place that does not directly compete and/or conflict with existing restaurants that are so important and vital to the GRT health of our town...we still believe the Town Hall Parking lot would be a good alternative...plenty of space, distance from existing restaurants, parking, available power if necessary, restrooms, etc.

Please pass this note along to the Mayor and Trustees.

Thanks, Tom and Jerean Hutchinson

Sent from my iPad

## Chapter 2.45 POLICE DEPARTMENT

### Sections:

- [2.45.010](#) Police department – Establishment – Composition – Department supervisor.
- [2.45.020](#) Marshal – Appointment – Duties.
- [2.45.030](#) Deputy marshals – Appointment – Duties.
- [2.45.040](#) Reserve deputy marshals – Qualifications – Authority of mayor to order to active duty.
- [2.45.050](#) Citizen's duty to aid.

### **2.45.010 Police department – Establishment – Composition – Department supervisor.**

---

There is established a police department which shall consist of a marshal, and as many deputy and reserve deputy marshals and other personnel as may be allowed from time to time by the board of trustees. The marshal shall be the department supervisor. [Ord. 91-02 § 2; prior code § 3-4-1]

### **2.45.020 Marshal – Appointment – Duties.**

---

- A. The marshal shall be responsible for the police function in Mesilla.
- B. The mayor, with the consent of the board of trustees, shall appoint the marshal.
- C. The marshal shall:
  1. Execute and return all writs and processes as directed by the municipal judge;
  2. Serve criminal writs and processes in Dona Ana County;
  3. Suppress all riots, disturbances and breaches of the peace;
  4. Apprehend all disorderly persons;
  5. Pursue and arrest any person fleeing from justice;
  6. Apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring her/him before competent authority for examination and trial;
  7. Administer and supervise the police department; and
  8. Perform other duties as required by law.

D. In the discharge of her/his proper duties, the marshal shall have the same powers and be subject to the same responsibilities as sheriffs or constables in similar cases. [Ord. 91-02 § 3; prior code § 3-4-2]

### **2.45.030 Deputy marshals – Appointment – Duties.**

---

- A. Deputy marshals shall be appointed by the mayor with the consent of the board of trustees.
- B. Deputy marshals shall be under the jurisdiction of the marshal in the execution of her/his duties. [Ord. 91-02 § 4; prior code § 3-4-3]

### **2.45.040 Reserve deputy marshals – Qualifications – Authority of mayor to order to active duty.**

---

- A. Reserve deputy marshals shall be appointed by the marshal and on the basis of job-related qualifications to serve at will without pay except as otherwise provided herein.

B. The mayor upon any emergency, riot, invasion or at any time he/she deems it necessary for the peace, good order or health of the municipality shall direct the marshal to place into active duty reserve deputies for a specified time not to exceed five days without the approval of the board of trustees.

C. Active reserve deputies shall have the authority and perform the duties of regular deputy marshals within the jurisdictional boundaries of the town of Mesilla.

D. Reserve deputies shall receive compensation in accordance with rules to be established by the marshal and subject to the board of trustees' budgetary approval. [Ord. 91-02 § 5; prior code § 3-4-4]

#### **2.45.050 Citizen's duty to aid.**

---

It shall be the duty of all persons, when called upon by any law enforcement officer within the municipality, to promptly aid and assist such officer in the discharge of her/his duties. [Ord. 91-02 § 7; prior code § 3-4-5]

---

#### **The Mesilla Town Code is current through Ordinance 2017-07, passed October 23, 2017.**

Disclaimer: The Town Clerk's Office has the official version of the Mesilla Town Code. Users should contact the Town Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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## MESILLA MARSHAL'S DEPARTMENT

P.O. BOX 10 MESILLA, NM 88046 PHONE 575-526-4138 FAX 575-652-3776

POLICE – ANIMAL CONTROL – EMERGENCY MANAGEMENT

MARSHAL K.C. ALBERG, CAS, FM, NMCEM

To: Mayor Nora Barazza

From: Marshal K.C. Alberg /s/K.C.

Date: 04/10/2018

Re: Military Leave Coverage

Ma'am, as you are aware the Marshal's Department must cover military leaves of unspecified durations from time to time. Currently, we have Deputy Marshal II Edward MADSON ordered to report for State Active Duty in the New Mexico National Guard. We understand that this could be from thirty (30) days up to two (2) years. Utilization of fully-qualified, certified reserve personnel presents a significant cost savings, due to the lower, singular hourly rate and lack of payments of benefits versus paying overtime to cover the shortfall. This presents a hardship for a small agency with a limited budget.

1. I hereby request utilization of a certified reserve deputy(ies) to cover up to the five (5) days under mayoral authority pursuant to Mesilla Town Code (MTC) 2.45.040.
2. I hereby request that you seek authorization from the Mesilla Board of Trustees (BOT) to cover the contingency on an ongoing basis specific to Deputy MADSON.
3. The agency seeks, by BOT resolution, the authority of the mayor to cover the specific contingency of Federal and State military activations beyond five (5) days, with a reporting back to the BOT of the purpose as discussed herein. The unprecedented utilization of Federal and State forces on short notice militates against waiting two (2) weeks to cover what is expected to extend beyond five (5) days, in the context of this request.

Thank you for your consideration.





## Mesilla Municipal Court

2231 Avenida De Mesilla  
P.O. Box 1517  
Mesilla, NM 88046  
Phone: (575) 524-1091  
Fax: (575) 647-9140

April 11, 2018

Mayor Barraza:

CC: Board of Trustees

RE: Pay raise increase

The court is proposing a salary increase for the Court Administrator; Andrea Carbajal from \$13.20 to \$15.00 per hour. During the last four (4) budget years the court has been under budget by five thousand dollars (\$5,000.00), therefore our budget is already funded for the stated amount.

A handwritten signature in cursive script that reads "Lionel C. Fietze". The signature is written in black ink and is positioned above the printed name and title.

Lionel C. Fietze  
Mesilla Municipal Judge

STATE OF NEW MEXICO            )  
COUNTY OF DONA ANA         ) ss.  
TOWN OF MESILLA                )

The Board of Trustees (the “Governing Body”) of the Town of Mesilla, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the Governing Body at the Town Hall, 2231 Avenida de Mesilla, Mesilla, New Mexico 88046, being the meeting place of the Governing Body for the regular meeting held on the 23<sup>rd</sup> day of April, 2018, 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. 2018-05

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE TOWN OF MESILLA, NEW MEXICO (THE “GOVERNMENTAL UNIT“) AND THE NEW MEXICO FINANCE AUTHORITY (THE “FINANCE AUTHORITY”), IN THE PRINCIPAL AMOUNT OF \$169,949 FOR THE PURPOSE OF FINANCING THE COSTS OF PURCHASING PUBLIC WORKS UTILITY VEHICLES AND RELATED EQUIPMENT, PAYING A LOAN PROCESSING FEE, AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY THE PRINCIPAL AMOUNT OF \$169,949, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES OF THE WATER UTILITY OF THE GOVERNMENTAL UNIT; 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.

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 be executed and delivered and that the financing of the Project take place by executing and delivering the Loan Agreement; and

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

WHEREAS, other than as described in Exhibit “A” to the Loan Agreement, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose to secure the payment of any obligation, which is currently outstanding; and

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

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

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the Town Clerk/Treasurer this Resolution and the form of the Loan Agreement, which is 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 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 capitalized terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

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

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

“Authorized Officers” means, in the case of the Governmental Unit, 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.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

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

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

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

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

“Governing Body” means the 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.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.1(ee) of the Loan Agreement.

“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).

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

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee.

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

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

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

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

“Net Revenues” means the Gross Revenues after deducting Operation and Maintenance Expenses.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit’s general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

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

“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 the Term Sheet.

“Resolution” means this Resolution No. 2018-05 adopted by the Governing Body on April 23, 2018, approving the Loan Agreement, as amended from time to time.

“Service Area” means the area served by the System, whether situated within or without the limits of the Governmental Unit.

“State” means the State of New Mexico.

“System” means the municipally owned public utilities designated as the Governmental Unit’s water systems consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the water utility service systems, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Governmental Unit designated by the Governing Body as part of the water utility service systems, whether situated within or without the limits of the Governmental Unit.

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

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

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

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

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

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

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the costs of completing 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 pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of and the public served by the Governmental Unit.

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

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

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 - 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 completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$169,949, plus interest thereon, and the execution and delivery of the Loan Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the completion of the Project; (ii) fund the Loan Agreement Reserve Account; (iii) pay the Processing Fee; and (iv) make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement shall be in substantially the form of the Loan 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 \$169,949, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on November 1, 2018 at the rates designated in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement. The form of the Loan 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, with such changes, insertions and omissions 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 attest the same. The execution of the Loan 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 and Loan Agreement Reserve Account.

A. Program Account and Finance Authority Debt Service Account and Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account and the Loan Agreement Reserve Account, to be held and maintained 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 in the Finance Authority Debt Service Account, (ii) the deposit of funds in the amount of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account; and (iii) the payment of the Processing Fee to the Finance Authority, all as set forth in Exhibit "A" to the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Loan Agreement Reserve Account and the Finance Authority Debt Service Account and the Program 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 completing the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete 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 completion of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the

Program Account shall be transferred and deposited into the Debt Service Account, as provided in the Loan Agreement and the Indenture.

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

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

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid directly by the Governmental Unit to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement, including sufficient Pledged Revenues in the Loan Agreement Reserve Account to maintain the Loan Agreement Reserve Requirement.

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 and Loan Agreement Reserve Account totals a sum at least equal to the entire aggregate amount to become due as to principal and 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 Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

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

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan Agreement, and all other transactions contemplated

hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan 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 has 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, and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, or resolution, 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. 2018-05, duly adopted and approved by the Governing Body of the Town of Mesilla, New Mexico, on April 23, 2018. 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, Mesilla, New Mexico 88046.

The title of the Resolution is:

TOWN OF MESILLA, NEW MEXICO  
RESOLUTION NO. 2018-05

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE TOWN OF MESILLA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF \$169,949 FOR THE PURPOSE OF FINANCING THE COSTS OF PURCHASING PUBLIC WORKS UTILITY VEHICLES AND RELATED EQUIPMENT, PAYING A LOAN PROCESSING FEE, AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY THE PRINCIPAL AMOUNT OF \$169,949, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES OF THE WATER UTILITY OF THE GOVERNMENTAL UNIT; 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.

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 23<sup>RD</sup> DAY OF APRIL, 2018.

TOWN OF MESILLA, NEW MEXICO

By \_\_\_\_\_  
Nora Barraza, Mayor

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 Barraza, Mayor

ATTEST:

By \_\_\_\_\_  
Cynthia Stohner-Hernandez, Town Clerk/Treasurer

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EXHIBIT "A"

Meeting Agenda  
of the April 23, 2018  
Board of Trustees Meeting

(See attached)

STATE OF NEW MEXICO            )  
COUNTY OF DONA ANA         ) ss.  
TOWN OF MESILLA                )

I, Cynthia Stoechner-Hernandez, the duly acting and qualified 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 Governmental Unit (the “Governing Body”), constituting the governing body of the Governmental Unit, had and taken at a duly called regular meeting held at the Town Hall at 2231 Avenida de Mesilla, Mesilla, New Mexico, on April 23, 2018, at the hour of 6:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. 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 as of the 23<sup>rd</sup> day of April, 2018.

TOWN OF MESILLA, NEW MEXICO

(SEAL)

By \_\_\_\_\_  
Cynthia Stoechner-Hernandez, Town Clerk/Treasurer

\$169,949

LOAN AGREEMENT

dated

June 1, 2018

by and between

NEW MEXICO FINANCE AUTHORITY

and

TOWN OF MESILLA, NEW MEXICO

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

## LOAN AGREEMENT

THIS LOAN AGREEMENT dated June 1, 2018, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (“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 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 public works utility vehicles and related equipment, as more fully described on the Term Sheet attached hereto as Exhibit “A”; and

WHEREAS, the Governmental Unit is permitted and authorized to pay the Loan Agreement Payments through the Net Revenues of the System (the “Pledged Revenues”); 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 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 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 have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

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

## ARTICLE I DEFINITIONS

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

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

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

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

“Authorized Officers” means, in the case of the Governmental Unit, 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 semiannually by The Bond Buyer’s Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

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

“Closing Date” means the date of execution and delivery 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.

“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.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished to the inhabitants in the Service Area.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.1(ee) of this Loan Agreement.

“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 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, or successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

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

“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 to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit “B” hereto.

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

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

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

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

under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

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

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

“Net Revenues” means the Gross Revenues after deducting Operation and Maintenance Expenses.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the various Governmental Unit departments directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit’s general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.



“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 Ratings Services; 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 the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Resolution and described on the Term Sheet.

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

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

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

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

“Resolution” means the Governmental Unit Resolution No. 2018-05 adopted by the Governing Body on April 23, 2018, approving this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Service Area” means the area served by the System, whether situated within or without the limits of the Governmental Unit.

“System” means the municipally, owned public utility designated as the Governmental Unit’s water system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the water system, and used in connection therewith or relating thereto, and any other related activity or

enterprise of the Governmental Unit designated by the Governing Body as part of the water system, whether situated within or without the limits of the Governmental Unit.

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

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

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

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

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

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

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

(c) Authorization of Loan Agreement. 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 to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement (less the deposits to the Loan Agreement Reserve Account, if any, the Finance Authority Debt Service Account and the Processing Fee) to the acquisition of the Project.

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

(f) Acquisition and Completion of Project. The Project will consist of acquiring public works utility vehicles and related equipment. 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.

(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 this Loan Agreement constitutes a legal, valid and binding special obligation of the Governmental Unit enforceable in accordance with its terms.

(i) Loan Agreement Term. The weighted average maturity of 2.950 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; (ii) the Loan Agreement Reserve Requirement and (iii) an amount necessary to pay the Processing Fee and the costs related to the issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan 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 to comply with its obligation under this Loan Agreement. Neither the execution and delivery of this Loan Agreement by the Governmental Unit, nor compliance by the Governmental Unit with the obligations hereunder, 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, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement.

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

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably

expected to equal or exceed, one hundred thirty percent (130%) of the maximum Aggregate Annual Debt Service Requirement.

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

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

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

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

(x) Use Charges. The Governmental Unit has established and will continue to charge reasonable rates for services rendered by the Governmental Unit for use of the System taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation, and the amounts necessary to make debt services payments from Net Revenues of the System. There shall be charged against users, rates and amounts which shall be increased from time to time, if necessary, and which shall produce Gross Revenues sufficient to pay the annual Operation and Maintenance Expenses and one hundred thirty percent (130%) of the Aggregate Annual Debt Service Requirement payable during the then current Fiscal Year.

(y) Efficient Operation. The Governmental Unit will operate the System so long as this Loan Agreement is outstanding, will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and sufficient to supply reasonable public and private demands for System services within the Service Area.

(z) Records. So long as the Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers for the water facilities; (ii) the revenues separately received from charges by classes of customers, including but not necessarily limited to classification by water facilities; and (iii) a detailed statement of the expenses of the System.

(aa) Right to Inspect. The Finance Authority and the Trustee shall have the right to inspect at all reasonable times all records, accounts and data relating to the System and to inspect the System and all properties comprising the System.

(bb) Audits. The Governmental Unit further agrees that, except where the State Auditor of the State performs the audit or where the due date for the audit has been postponed as may otherwise be required by the State Auditor or any other State office or agency with appropriate authority, the Governmental Unit will, within one hundred eighty (180) days following the close of each Fiscal Year, cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant. Each audit will be available for inspection by the Finance Authority. The Governmental Unit will provide the Finance Authority with a copy of each audit promptly upon the request of the Finance Authority. All expenses incurred in the making of the audits and reports required by this Section shall be regarded and paid as an Operation and Maintenance Expense.

(cc) Billing Procedure. Bills for water utility services or facilities, or any combination, furnished by or through the System, shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the Governmental Unit. If permitted by law, if a bill is not paid within the period of time required by such ordinance, water services shall be discontinued as required by such ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Water services may be

billed jointly with each other, provided that each such joint bill shall show separately the water charges.

(dd) Charges and Liens Upon System. The Governmental Unit will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System. The Governmental Unit will not create or permit any lien or charge upon the System or the Gross Revenues except as provided in this Loan Agreement, or it will make adequate provisions to satisfy and discharge within sixty (60) days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Gross Revenues. However, the Governmental Unit shall not be required to pay or cause to be discharged, or make provision for any tax assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse effect on the Finance Authority or the Trustee.

(ee) Insurance. The Governmental Unit will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self insured programs provided by municipalities which operate water utility systems. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the Governmental Unit may have a material interest and of which the Governmental Unit may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Governmental Unit determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, any remainder may be used to redeem Parity Obligations or be treated as Gross Revenues.

(ff) Alienating System. The Governmental Unit will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part thereof, including any and all extensions and additions that may be made thereto, until this Loan Agreement shall have been paid in full, including the Principal Component and the Interest Component, except that the Governmental Unit may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of this Loan Agreement, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues of the System as provided herein.

(gg) Competent Management. The Governmental Unit shall employ or contract for experienced and competent personnel to manage the System.

(hh) Performing Duties. The Governmental Unit will faithfully and punctually perform all duties with respect to the System required by the Constitution and the laws of the State and the ordinances and resolutions of the Governmental Unit, relating to the System and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as hereinabove provided.

(ii) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the System or the revenues derived or to be derived from the operation of the same.

(jj) Completion Bonds. In order to insure the completion of the Project, the Governmental Unit will require that the contractor to whom is given any contract for construction appertaining to the Project supply a completion bond or bonds satisfactory to the Governmental Unit, and that any sum or sums derived from said completion bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

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. 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, by proper action, has duly authorized the execution and delivery of this Loan 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 except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, nor the consummation of the transactions contemplated in this Loan 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 to comply with its obligations under this Loan Agreement. Neither, the execution and delivery of this Loan Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan 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 constitutes the legal, valid and binding obligation of the Finance Authority enforceable in accordance with its terms.

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

### ARTICLE III LOAN AGREEMENT TERM

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

### ARTICLE IV LOAN; APPLICATION OF MONEYS

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

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

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

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

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

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

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account and the Loan Agreement Reserve Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, or shall provide as permitted by Article VIII of this Loan Agreement for the payment thereof 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 the 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. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amounts provided in subsection (c) for deposit into the Loan Agreement Reserve Account. The Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee,

each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

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

(i) Interest Components. Monthly, (A) beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is November 1, 2018), and (B) on the first day of each month thereafter, one-sixth (1/6<sup>th</sup>) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. Monthly, (A) beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is May 1, 2019), and (B) on the first day of each month thereafter, one-twelfth (1/12<sup>th</sup>) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

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

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

Pledged Revenues shall be deposited to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement, and any moneys in the Loan Agreement Reserve Account may, at the written direction of the Finance Authority, be applied to the Finance Authority Debt Service Account, released to the Governmental Unit for the Project or used for any other purposes provided by law. If amounts in the Loan Agreement Reserve Account are released by the Finance Authority, the references in this Loan Agreement to the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement shall be of no further force and effect.

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

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

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

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

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

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the “Historic Test Period”) shall have been sufficient to pay an amount representing one hundred thirty percent (130%) 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 and Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

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

ARTICLE VI  
THE PROJECT

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

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

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

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

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

ARTICLE VII  
COMPLIANCE WITH LAWS  
AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver,

or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

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

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

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

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

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



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

Accordingly, with respect to the Loan Agreement, the Governmental Unit will qualify for the rebate exemption granted under Section 148(f)(4)(D) of the Code and the Governmental Unit shall be treated as meeting the requirements of paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States.

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

## ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. There is no option to prepay this Loan Agreement in whole or in part.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit’s payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the

Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. 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, 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 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:

(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 against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

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

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

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

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

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

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

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

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

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

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

the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE 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, Mesilla, New Mexico 88046, Attention: 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 NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

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

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

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

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

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

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement 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 March 22, 2018, 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 \_\_\_\_\_  
Robert P. Coalter, 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 Barraza, Mayor

ATTEST:

By \_\_\_\_\_  
Cynthia Stoechner-Hernandez, Town Clerk/Treasurer

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**EXHIBIT "A"**

TERM SHEET

New Mexico Finance Authority Loan No. PPRF-4711

Governmental Unit:	Town of Mesilla, New Mexico
Project Description:	Purchase public works utility vehicles and related equipment
Loan Agreement Principal Amount:	\$169,949
Pledged Revenues:	The Net Revenues of the System
Coverage Ratio:	130%
Currently Outstanding Parity Obligations:	None
Currently Outstanding Subordinate Obligations:	NMFA Loan WTB-122, maturing 2028; NMFA Loan WTB-159, maturing 2029; NMFA Loan WTB-3558, maturing 2038
Additional Parity Bonds Test:	130%
Authorizing Legislation:	Resolution No. 2018-05 adopted on April 23, 2018
Closing Date:	June 1, 2018
Blended Interest Rate:	2.596869%
Program Account Deposit:	\$151,679
Loan Agreement Reserve Account Deposit:	\$16,994.90
Finance Authority Debt Service Account Deposit:	\$0.48
Processing Fee:	\$1,274.62
First Interest Payment Date:	November 1, 2018
First Principal Payment Date:	May 1, 2019
Final Payment Date:	May 1, 2023

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]

**EXHIBIT "C"**

FORM OF REQUISITION

RE: \$169,949 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 (2018 Public Works Utility Vehicles Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-4711

CLOSING DATE: JUNE 1, 2018

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 (2018 Public Works Utility Vehicles 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: \$169,949 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

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

LOAN NO.: PPRF-4711

CLOSING DATE: JUNE 1, 2018

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



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 \$151,679 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 \$151,679 plus investment earnings thereon during the acquisition period.

Proceeds in the amount of \$1,274.62 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 \$0.48 will be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 of the Loan Agreement.

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

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

8. Reserve Account. Proceeds in the amount of \$16,994.90 will be deposited in the Governmental Unit's Loan Agreement Reserve Account in the Agreement Reserve Fund held by the Trustee under the Indenture, which amount does not exceed the least of (i) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; (ii) the maximum annual principal and interest requirements under the Loan Agreement, or (iii) ten percent (10%) of the Loan Agreement Principal Amount. Amounts held in

the Governmental Unit's Loan Agreement Reserve Account may be applied to prevent deficiencies in the payment of principal and interest on the Loan Agreement resulting from a failure by the Governmental Unit to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service on the Loan Agreement. After examination of the purposes for which the Loan Agreement Reserve Account has been established, which are based on discussions with the Finance Authority that the Loan Agreement Reserve Account is required as a condition to enter into the Loan Agreement with the Finance Authority, the Governmental Unit is of the opinion that the amount deposited to the Loan Agreement Reserve Account is reasonably required.

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

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

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

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

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

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

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



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

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

18. Economic Life of Project. The weighted average maturity of 2.950 years of the Loan Agreement does not exceed 120% of the reasonably expected economic life of the Project, which is at least \_\_\_\_\_ ( ) years.

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

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

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

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

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

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

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

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

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

[Signature page follows]

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

Dated: June 1, 2018.

TOWN OF MESILLA, NEW MEXICO

By \_\_\_\_\_  
Nora Barraza, Mayor

By \_\_\_\_\_  
Cynthia Stoechner-Hernandez,  
Town Clerk/Treasurer

[SEAL]

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**EXHIBIT “B”**

**NEW MEXICO FINANCE AUTHORITY TAX REPRESENTATIONS CERTIFICATE**

The undersigned hereby certifies as follows with respect to the \$169,949 Loan Agreement dated June 1, 2018 (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 \$169,949, 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 \$169,949.

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 2.594398%.

3. Funding the Loan Agreement Reserve Account with proceeds of the Loan in the amount of \$16,994.90 was required by the Finance Authority as a condition of making the Loan, and is, in the best judgment of the undersigned, reasonably required to provide the Loan at a reasonable interest rate for the Governmental Unit and is, in the best judgment of the undersigned, established at a level of funding comparable to that found for obligations of similar credit quality as the Loan which were issued or originated within the past year.

4. The Weighted Average Maturity of the Loan, calculated in accordance with the applicable U.S. Treasury Regulations, is 2.950 years.

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

Dated this June 1, 2018.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Robert P. Coalter, Chief Executive Officer



WITNESS our hands this June 1, 2018.

TOWN OF MESILLA, NEW MEXICO

By \_\_\_\_\_  
Nora Barraza, Mayor

By \_\_\_\_\_  
Cynthia Stoechner-Hernandez,  
Town Clerk/Treasurer

[SEAL]

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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.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Robert P. Coalter, Chief Executive Officer

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\$169,949  
TOWN OF MESILLA, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY LOAN

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

IT IS HEREBY CERTIFIED by the undersigned, the duly elected and chosen, Mayor and Town Clerk/Treasurer and Attorney for the Town of Mesilla, New Mexico (the “Governmental Unit”) in Dona 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. 2018-05 adopted on April 23, 2018 (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 February 5, 2018 (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 Barraza
Mayor Pro-Tem:	Jesus Caro
Trustees:	Carlos Arzabal Stephanie Johnson-Burick Veronica Garcia
Attorney:	Joseph Cervantes
Town 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 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. The Loan Agreement has 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. 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 that constitutes a default or an event of default under either the Loan Agreement or the Resolution, and no event of default and no default under the Loan 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 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 and the Loan 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 to any of the actions required to be taken by the Resolution and the Loan 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 or the Loan 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 or any proceedings of the Governmental Unit taken with respect to the Loan Agreement or the Resolution; (d) the execution and delivery of the Loan Agreement; or (e) the power of the Governmental Unit to carry out the transactions contemplated by the Loan 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 in the 2231 Avenida de Mesilla, Mesilla, New Mexico 88046, 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. 2017-11, as adopted and approved by the Governing Body on May 22, 2017, establishes notice standards as required by Sections 10-15-1 through 10-15-4, NMSA 1978. Open Meetings Act Resolution No. 2017-11 has not been amended or repealed. All action of the Governing Body with respect to the Loan Agreement and the Resolution was taken at meetings held in compliance with Open Meetings Act Resolution No. 2017-11.

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 thirty percent (130%) 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 on the date of this Certificate, are the duly chosen, qualified and acting officers of the Governmental Unit authorized to execute such agreements.

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

27. This Certificate may be executed in counterparts.

[Signature page follows]

WITNESS our hands and the seal of the Governmental Unit this 1<sup>st</sup> day of June, 2018.

TOWN OF MESILLA, NEW MEXICO

By \_\_\_\_\_  
Nora 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

SUTIN THAYER  BROWNE  
A PROFESSIONAL CORPORATION  
LAWYERS

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

ROBERT G. HEYMAN (Of Counsel)  
DEREK V. LARSON (Of Counsel)

ANDREW J. BARANOWSKI  
ANNE P. BROWNE  
SUZANNE WOOD BRUCKNER

MARIA MONTOYA CHAVEZ  
KATHARINE C. DOWNEY  
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SUSAN M. HAPKA  
BRANA L. HARDWAY  
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WADE L. JACKSON  
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CHRISTINA M. LOONEY  
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LYNN E. MOSTOLLER  
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WWW.SUTINFIRM.COM

June 1, 2018

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

Town of Mesilla  
2231 Avenida de Mesilla  
Mesilla, NM 88046

\$169,949 New Mexico Finance Authority  
Loan to Town of Mesilla, New Mexico  
(PPRF-4711)

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Ladies and Gentlemen:

We have acted as Loan Counsel to the New Mexico Finance Authority (the “Finance Authority”) in connection with the \$169,949 Loan Agreement (the “Loan Agreement”) between the Town of Mesilla, New Mexico (the “Governmental Unit”) and the Finance Authority. The Loan Agreement is executed and delivered by the Governmental Unit pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, and the Governmental Unit’s Resolution No. 2018-05, adopted on April 23, 2018 (the “Resolution”). The Loan Agreement has been executed and delivered to provide funds for purchasing public works utility vehicles and related equipment, to fund the Loan Agreement Reserve Account and to pay the Processing Fee, as described in the Loan Agreement.

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

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

June 1, 2018

Page 2

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

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

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

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

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

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

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

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

June 1, 2018  
Page 3

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

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

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

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

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

Very truly yours,

SUTIN, THAYER & BROWNE  
A Professional Corporation

\$169,949  
TOWN OF MESILLA, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY  
Loan No. PPRF-4711

TRANSCRIPT OF PROCEEDINGS  
INDEX

Closing Date: June 1, 2018

1. Open Meetings Act Resolution No. 2017-11 adopted on May 22, 2017
2. Loan Resolution No. 2018-05, adopted April 23, 2018, Agenda, and the Affidavit of the Notice of Adoption of Resolution in the *Las Cruces Sun News*
3. Loan Agreement
4. General and No Litigation Certificate
5. Arbitrage and Tax Certificate with Form 8038-G and evidence of filing and Finance Authority Tax Representations Certificate
6. Delivery, Deposit and Cross-Receipt Certificate
7. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan Counsel to the Finance Authority
8. Finance Authority Application and Project Approval (informational only)

TRANSCRIPT DISTRIBUTION LIST

Town of Mesilla, New Mexico  
New Mexico Finance Authority  
BOKF, NA dba Bank of Albuquerque  
Sutin, Thayer & Browne A Professional Corporation





**RESOLUTION NO. 2018-06**

**A RESOLUTION AFFIRMING SUPPORTING FOR THE WHITE SANDS NATIONAL PARK ESTABLISHMENT ACT.**

**Whereas**, the Town of Mesilla has benefited economically from our distinction of possessing high quality of life, historic preservation and abundant stunning natural resources and vistas, and

**Whereas**, White Sands National Monument is enjoyed by Mesilla residents and others for its spectacular scenery and unique recreational and educational opportunities, and

**Whereas**, the Town of Mesilla has a strong record of demonstrating support for preserving and raising awareness of historic, cultural, and natural resources throughout the region, and

**Whereas**, White Sands National Monument was established in 1933 to preserve the largest gypsum dunefield in the world, and

**Whereas**, in recent years, a number of exceptional, nationally significant discoveries have been made in White Sands National Monument, these discoveries qualify White Sands National Monument as a national park, and national park designation will provide proper acknowledgement of these discoveries and other resources in White Sands National Monument, and

**Whereas**, the Town of Mesilla has worked successfully to grow the economic benefit of outdoor recreation tourism to our community, continues to recognize the importance of tourism as one of the cornerstones of our local economy, and desires to pursue new opportunities to increase tourism, and

**Whereas**, 2016 was the centennial of the National Park Service and visitors around the world are taking new interest in experiencing National Park Service units, and

**Whereas**, since 1995 White Sands National Monument has been the most visited unit of the National Park Service in New Mexico, and

**Whereas**, in 2016 visitor spending at White Sands National Monument supported over 430 jobs and \$33.6 million in economic impact to the local economy, and spending by non-local visitors generated over ninety eight percent of this impact, and

**Whereas**, monuments that become national parks tend to attract more visitors, and

**Whereas**, the Town of Mesilla understands the critical contributions of the military missions in our region to the national security of our nation as well as to our local economy, and

**Whereas**, White Sands Missile Range and White Sands National Monument have been working to exchange lands to simplify management since before 1978, and the White Sands National Park Establishment Act would complete an updated land exchange which creates important opportunities for enhancement of the visitor experience and fulfillment of elements of White Sands Missile Range’s 30-year Strategic Plan, and

**Whereas**, the provisions of the White Sands National Park Establishment Act provide appropriate flexibility to the Army for meeting its statutory obligations with respect to legacy munitions and preserve the Department of Defense’s ability to execute military missions now and in the future at White Sands Missile Range, Holloman Air Force Base, and Fort Bliss, including preserving the Department of Defense’s jurisdiction over and use of its restricted airspace, and

**Whereas**, the White Sands National Park Establishment Act will bring White Sands National Monument the prestige and attention it deserves through redesignation of the monument as a national park, increase the economic impact of tourism, and enhance the operations of White Sands National Monument and White Sands Missile Range,

**Therefore, be it resolved**, by the Town of Mesilla and its Trustees, that the Town of Mesilla supports the White Sands National Park Establishment Act, and

**May it further be resolved that**, the Town of Mesilla respectfully requests that Congress work to pass the White Sands National Park Establishment Act in the 115<sup>th</sup> Congress.

RESOLVED by the Town of Mesilla Board of Trustees in regular session on the 23rd day of April 2018.

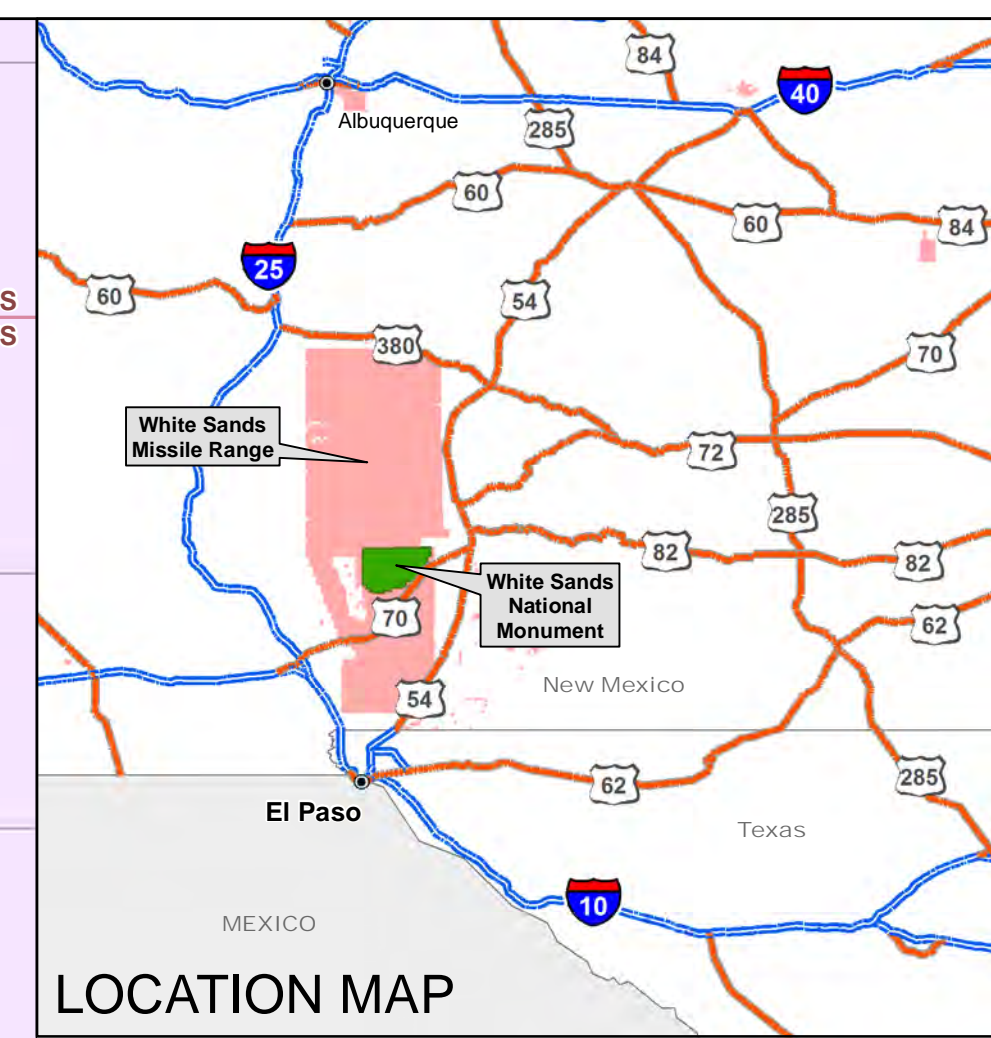
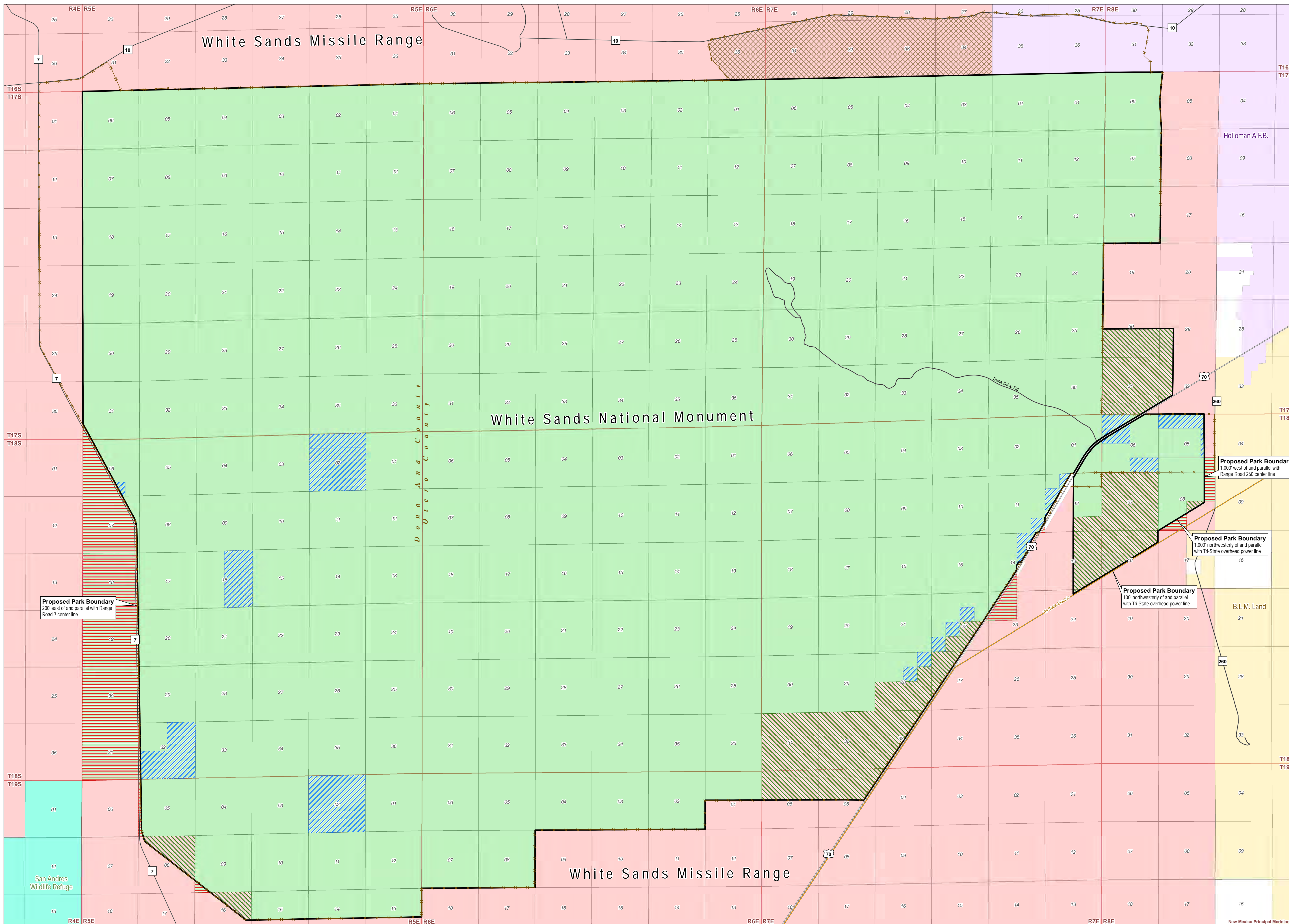
BOARD OF TRUSTEES OF TOWN OF MESILLA, NEW MEXICO

\_\_\_\_\_  
Nora L. Barraza  
Mayor

Attest:

\_\_\_\_\_  
Cynthia Stoechner-Hernandez  
Town Clerk-Treasurer

ROLL CALL VOTE:  
Mayor Pro Tem Caro: \_\_\_\_\_  
Trustee Arzabal: \_\_\_\_\_  
Trustee Garcia: \_\_\_\_\_  
Trustee Johnson-Burick: \_\_\_\_\_



- Current Land Status:**
- White Sands National Monument (NPS)
  - White Sands Missile Range (DOA)
  - Bureau of Land Management (BLM)
  - San Andres Wildlife Refuge (USFWS)
  - Holloman Air Force Base (USAF)
- Proposed Legislative Items:**
- Cooperative use research area: ±3,113.85 ac.
  - To DOA: ±3,736.66 ac.
  - To NPS, lands inside current boundary: ±2,826.27 ac.
  - To NPS, new additions: ±5,766.19 ac.
- Proposed National Park boundary**
- Public Land Survey System:**
- Township/range line
  - Section line
- Other Features:**
- US Highway 70
  - Range/park road
  - Existing fence
  - Overhead electric line corridor

**Proposed Park Boundary**  
200' east of and parallel with Range Road 7 center line.

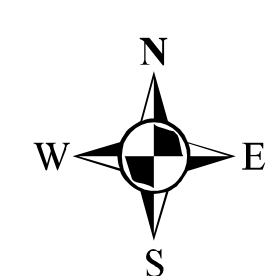
**Proposed Park Boundary**  
1,000' west of and parallel with Range Road 260 center line.

**Proposed Park Boundary**  
1,000' northwesterly of and parallel with Tri-State overhead power line.

**Proposed Park Boundary**  
100' northwesterly of and parallel with Tri-State overhead power line.



UNITED STATES  
DEPARTMENTS OF DEFENSE & INTERIOR  
WHITE SANDS MISSILE RANGE &  
NATIONAL PARK SERVICE



SCALE: 1" = 4,000'  
4,000 2,000 0 4,000  
Feet

Property ownership data shown is compiled from deeds, plats, surveys, and other source data. This is not a surveying quality drawing and should be used for general scaling purposes only. Acreages, if noted, have been derived from surveys and office compilations.

New Mexico State Plane Coordinate System, Central Zone, NAD83, US Foot.

# WHITE SANDS NATIONAL PARK

## PROPOSED BOUNDARY REVISION & TRANSFER OF LANDS BETWEEN NATIONAL PARK SERVICE & DEPARTMENT OF THE ARMY

# U.S. Senator Martin Heinrich

## White Sands National Park Establishment Act



CREDIT: National Park Service

U.S. Senator Martin Heinrich (D-N.M.) is proposing legislation to designate White Sands National Monument as a national park – the most prestigious National Park Service designation – to support the Tularosa Basin’s **and nearby** local economies. The legislation would also highlight significant new discoveries and resolve long-standing boundary challenges for the monument and White Sands Missile Range (WSMR). Senator Heinrich is a member of the Senate Committee on Armed Services and the Senate Committee on Energy and Natural Resources (ENR). He is also Ranking Member of the Joint **Economic Committee and of ENR’s** Subcommittee on National Parks.

*“I am proud to work with leaders in Otero County and southern New Mexico to help enhance the missions of the military and White Sands National Monument, and ensure the monument receives the recognition it deserves. Researchers have discovered nationally significant resources within the last decade at White Sands that have reshaped our understanding of the wildlife and human history in and around the dunefield, creating new opportunities for scientists and visitors. Everyone who has been to White Sands National Monument knows that its remarkable geology, spectacular scenery, and outstanding recreation are worthy of national park designation.”*

– U.S. Senator Martin Heinrich

### History and economic impact

White Sands National Monument was established in 1933 by President Herbert Hoover **to preserve “the white sands”** - the largest gypsum dunefield in the world. The bright white dunes are so distinctive that they are used by astronauts as a geographic reference point when looking down at Earth. Travelers continue to recognize the unique recreation opportunities at White Sands. The monument attracts visitors from around the world, making it one of the most photographed places in the United States.

White Sands has seen more visitors than any other National Park Service site in New Mexico in every year since 1995. White Sands received an average of almost 505,000 people each year during that time **period, and saw almost a third of all visitation to New Mexico’s National Park Service sites in** recent years. In 2016, these visitors spent \$29.3 million in the local economy and supported over 430 jobs, \$10.6 million in labor income, and \$33.6 million in economic output. Similar to previous years, non-local visitors contributed 98.8% of that economic output, directly growing the economy in Otero County and the surrounding region.

### Working with the military

**Senator Heinrich’s bill supports the close relationship of the** National Park Service with the U.S. Department of Defense installations in southern New Mexico. Neither airspace management nor military operations are affected by re-designation of White Sands National Monument. In fiscal year 2017, the monument supported approximately 80 military tests, and this would continue. Senator **Heinrich’s bill** simplifies management of both White Sands National Park and White Sands Missile Range and provides new opportunities for both the park and the military. The bill would also complete a land exchange in progress since before 1985 and resolve jurisdiction questions dating to the 1970s. The legislation protects existing authorities and important ways in which the two agencies work together

by continuing interagency agreements, including provisions related to restricted airspace and evacuations during military tests to keep visitors separated from potential hazards.

### Recent discoveries

People have been studying White Sands National Monument for the better part of a century, but a diversity of nationally significant resources and new insights into the dunefield itself have been discovered in just the last decade. These have sparked both vigorous interest from scientists, historians, and archaeologists and efforts to share new information with visitors. According to monument scientists and publications such as the 2016 White Sands National Monument Foundation Document:

- ⇒ For many years we have known that White Sands contains pueblo structures, tools, and other archaeological riches. New evidence of human habitation in the dunefield over the past 10,000 years or longer has been found, including thousands of hearth sites preserved in ways found nowhere else. Hearth fires hardened the gypsum that encapsulated charcoal, food, and cultural material, making these hearth sites excellent time capsules.
- ⇒ White Sands was recently designated as a Mega-Track site for all the Pleistocene (Ice Age) mammal tracks unearthed and documented there. The monument has largest collection fossilized tracks in gypsum in the world and the largest concentration of tracks in North America from that period. Tracks have been found from dire wolves, giant ground sloths, saber-toothed cats, woolly mammoths, and ancient camels.
- ⇒ New species and subspecies of insects, reptiles, mammals, and others groups are being discovered in White Sands every year. These animals rapidly adapted to the unique dunefield conditions within less than 10,000 years, as did many of the plants found in the monument. Many species in the monument are found nowhere else in the world.
- ⇒ Scientists in many disciplines continue to conduct groundbreaking research in White Sands, and have made new advances in understanding – from the hydrological processes that help maintain the dunefield to microorganisms in the soil to techniques for space exploration.

### Elevating the monument to a national park

National parks are established to protect and enjoy a variety of nationally significant resources, as opposed to national monuments that may protect as few as one resource such as the dunefield originally cited in 1933. Only Congress has the authority to create national parks. White Sands would be the second national park in New Mexico, along with Carlsbad Caverns.

A Federal Reserve study of eight monument to park re-designations through 2000 found that within one year of re-designation, visitation increased by an average of approximately 13,000 visitors annually. For some parks this number is significantly higher. The Federal Reserve study also found that park re-designation does not **“divert visitation from other sites but rather adds new visitors to the NPS system.”**

While visitors will experience no change in management (including in entrance fees) due to the designation, becoming a national park means immediate and more prominent inclusion in global and domestic travel materials. National park designation is important in the effort to attract more visitors, especially international and out-of-state travelers. With increased visitation, the park will collect additional revenue allowing for even better resource protection, interpretation, and visitor opportunities. And the surrounding community will experience more economic growth.

Becoming a national park does not affect the unrelated nomination process for **the United Nations’** World Heritage List. However, **Senator Heinrich’s legislation** references the existing nomination process preventing the U.S. Department of Interior from nominating White Sands National Park to become a World Heritage site without the concurrence of Otero and Dona Ana Counties.

The 100<sup>th</sup> anniversary of the National Park Service drove record numbers of Americans and tourists from around **the globe to “Find Your Park”** in 2016. Now is the perfect time to tell the story of White Sands to a new generation as our next national park.

# U.S. Senator Martin Heinrich

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## FAQ: White Sands National Park Establishment Act and **Southern New Mexico's** Military Installations

The White Sands National Park Establishment Act, sponsored by U.S. Senator Martin Heinrich (D-N.M.), supports the close relationship between the National Park Service (NPS) and the U.S. Department of Defense (DOD) installations in southern New Mexico: White Sands Missile Range (WSMR), Holloman Air Force Base, and Fort Bliss.

Were the military installations consulted in the development of this bill?

Yes. Conversations between congressional staff, DOD, and NPS began in 2010, when the Army requested assistance completing the land exchange between White Sands National Monument (WSNM) and WSMR. Since then, many discussions – including with the Pentagon - have taken place and a number of provisions were specifically developed by Senator Heinrich to reflect DOD needs and **installations'** agreements with WSNM.

Will the use of White Sands Missile Range's **restricted airspace be affected?**

No. WSMR controls the airspace above the monument from ground to infinity, and changing **from a monument to a park does not alter DOD's jurisdiction. Even if the airspace was not** restricted, there is no difference between how airspace is managed by FAA over a national monument versus a national park. This has been confirmed multiple times by WSMR, Holloman, and the NPS.

Will existing interagency agreements be nullified?

No. The bill specifies that existing documents, including interagency agreements, are to remain valid after the re-designation of WSNM to a national park. This includes existing provisions **related to WSMR's restricted airspace and evacuations during military tests to keep visitors** separated from potential hazards. In fiscal year 2017, the monument supported approximately 80 military tests. Further, DOD and NPS will still be able to enter into new agreements as necessary.

Are the process or standards for cleanup of a military aircraft crash different in a park than a monument?

No. Laws, authorities, processes, and standards are the same for national parks and monuments.

Are there changes being made to the monument and military installations?

Yes. The bill simplifies management of both the monument and WSMR and provides new opportunities for the monument and the military through the completion of a land exchange which has been in progress since 1985. The land exchange, in which both parties give and receive acreage, is a result of direct negotiations between WSMR and WSNM and takes into account needs of the Army, Air Force, Navy, and others. The bill also clarifies jurisdiction questions that arose in the 1970s.

**Are there any other provisions included in the bill protecting the region's military** missions?

Yes. Air quality classification is the only difference between a monument and a park as far as law, regulations, and management are concerned. **Senator Heinrich's bill specifies that re-designation** to national park does not affect the kind of air quality standards the NPS must follow at White Sands. The dunes themselves are the major contributor to airborne particulate matter in the Tularosa Basin. The bill language ensures that the re-designation will not lead to restrictions on activities that might affect air quality in the region by the NPS, DOD, or other parties.

Why is this legislation necessary to execute the land exchange if an exchange was authorized by Congress in 1996?

First, the 1996 law authorized the exchange but did not execute it. For various reasons including the difficulty of completing an unexploded ordnance (UXO) survey on all of the land involved, the partners have been unable to complete the exchange. Second, this bill reflects a new agreement, reached between WSMR and WSNM in February 2017, which optimizes boundaries to address current needs better than the 1996 authorization did. In addition to changes like those mentioned below, the Army will be able to retain approximately 2,500 acres to the northwest of the monument that the 1996 legislation would have transferred from WSMR to the monument. Keeping this land allows for better management of various military facilities in the parcel.

Will the land exchange affect roadblocks in support of military tests?

No. As referenced above, testing can continue as it does today. However, since White Sands National Park would acquire some additional resources outside the test evacuation area in the exchange, visitors would have opportunities to learn and explore outside during roadblocks. This is not possible today. This should improve perceptions of WSMR as well as keep visitors in the area longer, potentially leading to increased economic impact.

Does the bill address management of WSMR utilities currently on NPS property?

Yes. The bill improves the ability of WSMR to manage its utilities. Right now WSMR manages utility infrastructure located to the east of Range Road 7 inside the monument under an agreement with the monument. While the agreement is working well, this bill gives jurisdiction of the land involved to WSMR. This facilitates investment by the military in the maintenance and upgrades of the utilities and road, while preventing further damage to the watershed.

Does the bill address transportation between the northern and southern portions **of WSMR, as identified in WSMR's** new 30-year strategic plan?

Yes. **Senator Heinrich's** legislation also provides WSMR jurisdiction over certain land on the east side of the monument in this land exchange. This property will provide flexibility for the military if it should decide to pursue the creation of a north-south access route for use during testing and training exercises. Currently, there is no decision or plan to construct such an access route.

**Will the Army complete an unexploded ordnance (UXO) survey (“investigation”) and remediation (“response action”) on land transferred to White Sands** National Park?

The Army will remain responsible for any of its UXO and other munitions and will survey or remove those only as needed by the NPS to expand opportunities for visitors or improve safety in specific areas. This approach reduces costs. Survey and remediation will be dependent on appropriations to the Army and the ability to conduct cleanup without significant damage to important park resources. The Army and NPS will work together using the process outlined in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to identify appropriate options for cleanup. CERCLA includes opportunities for public review and input. Areas will not be open to the public until remediation required for safety is completed.

What is the Cooperative Use Research Area (CURA)?

White Sands Missile Range contains rare dune formations just north of the monument, and the CURA reflects an agreement between WSMR and WSNM to allow NPS and related scientists to conduct research more easily in that area. Much of that research will benefit both the natural resource management and military research, development, test, and evaluation communities. The bill does not direct specific terms of the agreement, but leaves that to WSMR and WSNM to work out. **The land will remain under WSMR's jurisdiction.**