

CITY OF ESPAÑOLA, NEW MEXICO
ORDINANCE NO. 2017-01

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ESPAÑOLA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF FOUR MILLION TWO HUNDRED NINETY THOUSAND DOLLARS (\$4,290,000 FOR THE PURPOSE OF REFUNDING 2007 PUBLIC PROJECT REVOLVING FUND LOAN NO. 1879-PP, ISSUED TO DEFRAY THE COST OF ACQUIRING, CONSTRUCTING AND IMPROVING INFRASTRUCTURE PROJECTS FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$4,290,000, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX IMPOSED PURSUANT TO SECTION 7-19D-18, NMSA 1978, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

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

WHEREAS, pursuant to the Act, the Governmental Unit has by the Tax Ordinance imposed the three-eighths of one percent (0.375%) Municipal Hold Harmless Gross Receipts Tax on the gross receipts of all persons engaging in business within the Governmental Unit, which provides for the Pledged Revenues; and

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ESPAÑOLA, NEW MEXICO:

Section 1. Definitions. As used in this Ordinance, 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, Section 7-19D-18, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

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

“Authorized Officers” means the Mayor, City Manager, City Clerk and Administrative Services Director of the Governmental Unit.

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

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

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

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

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

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

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

“Governmental Unit” means the City of Española, New Mexico.

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

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

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

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

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

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on Exhibit “A” to the Loan Agreement.

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

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

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

“Ordinance” means this Ordinance No. 2017-01 adopted by the Governing Body on January 10, 2017 approving the Loan Agreement and the Intercept Agreement as amended from time to time.

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

“Pledged Revenues” means the Municipal Hold Harmless Gross Receipts Tax enacted pursuant to Section 7-19D-18, NMSA 1978, as amended, and the Tax Ordinance and distributed to the Governmental Unit, which is utilizing the Project and benefiting from the Loan Agreement, which distribution is made monthly by the Distributing State Agency.

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

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

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

“Refunded Loan” means Finance Authority Loan No. 1879-PP to the Governmental Unit dated March 16, 2007 in the original principal amount of \$7,700,000.

“State” means the State of New Mexico.

“Tax Ordinance” means Ordinance No. 2014-03 passed and approved by the Governmental Unit pursuant to the Act on March 20, 2014, which imposes the three-eighths of one percent (0.375%) increment of the Municipal Hold Harmless Gross Receipts Tax on the gross receipts of persons engaging in business within the Governmental Unit.

“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 Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

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

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

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

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

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

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

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

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

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

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

I. Pursuant to Section 7-19D-18, NMSA 1978, as amended, the Governmental Unit heretofore has adopted the Tax Ordinance, which imposes the three-eighths of one percent (0.375%) increment of Municipal Hold Harmless Gross Receipts Tax on the gross receipts of persons engaging in business within the Governmental Unit.

J. Pursuant to Section 7-1-6.12, NMSA 1978, as amended, the Governmental Unit receives Pledged Revenues from the Distributing State Agency.

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

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three fourths (3/4) majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of four million two hundred ninety thousand dollars (\$4,290,000), plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the refunding of the Refunded Loan; (ii) fund the Loan Agreement Reserve Account; and (iii) pay the Processing Fee. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of four million two hundred ninety thousand dollars (\$4,290,000), shall be payable in installments of principal due on March 1 of the years designated in Exhibit "B" to the

Loan Agreement and bear interest payable on March 1 and September 1 of each year, beginning on September 1, 2017 at the rates designated in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement, as presented at the meeting of the Governing Body at which this Ordinance was adopted, are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement, with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance 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 Ordinance 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 Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

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

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

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, the Loan Agreement Reserve

Account and the Finance Authority Debt Service Account, and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

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

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

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

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

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

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement, 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 amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal 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 Ordinance. 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 Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance 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. Ordinance Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Ordinance 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 Ordinance 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 Ordinance.

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

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (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 Ordinance 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 Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Española, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2017-01, duly adopted and approved by the Governing Body of the City of Española, New Mexico, on January 10, 2017. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours in the office of the City Clerk, 405 North Paseo de Oñate, Española, New Mexico 87532.

The title of the Ordinance is:

CITY OF ESPAÑOLA, NEW MEXICO
ORDINANCE NO. 2017-01

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ESPAÑOLA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF FOUR MILLION TWO HUNDRED NINETY THOUSAND DOLLARS (\$4,290,000) FOR THE PURPOSE OF REFUNDING 2007 PUBLIC PROJECT REVOLVING FUND LOAN NO. 1879-PP, ISSUED TO DEFRAY THE COST OF ACQUIRING, CONSTRUCTING AND IMPROVING INFRASTRUCTURE PROJECTS FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$4,290,000, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX IMPOSED PURSUANT TO SECTION 7-19D-18, NMSA 1978, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND

**AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH
THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND
INTERCEPT AGREEMENT.**

A general summary of the subject matter of the Ordinance 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 10TH DAY OF JANUARY, 2017.

CITY OF ESPAÑOLA, NEW MEXICO

By:



Alice A. Lucero, Mayor

[SEAL]

ATTEST:

By:



Anna Squires, City Clerk



Mayor Pro Tem Adrianna Ortiz then moved adoption of the foregoing Ordinance, duly seconded by Councilor Pedro Valdez.

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

Those Voting Aye: Mayor Pro Tem Adrianna Ortiz

Councilor Pedro Valdez

Councilor Peggy Sue Martinez

Councilor Manuel J. Martinez

Councilor John Hernandez

Councilor Robert Seeds

Those Voting Nay: (None)

Those Absent: Councilor Dennis Tim Salazar

Councilor Michelle R. Martinez

Six (6) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the City Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

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

CITY OF ESPAÑOLA, NEW MEXICO

By:



Alice A. Lucero, Mayor

[SEAL]

ATTEST:

By:



Anna Squires, City Clerk



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EXHIBIT "A"

Meeting Agenda
of the January 10, 2017
City of Española, New Mexico, City Council Meeting

(See attached)



AGENDA
CITY COUNCIL MEETING
JANUARY 10TH, 2017, 6PM
CITY HALL COUNCIL CHAMBERS
405 N. PASEO DE OÑATE ESPAÑOLA, NM

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE/ MOMENT OF MEDITATION/ INVOCATION
- C. ROLL CALL/ DETERMINATION OF QUORUM
- D. APPROVAL OF AGENDA
- E. PUBLIC COMMENTS

Please turn off cell phones
or set to silent mode

PLEASE SIGN IN: *Print First Name and Last, including Affiliation and/or Address if Applicable. Please Keep Comments to a five (5) Minute Time Frame. Public Comment Log Sheet Located upon South East Entry near the City Clerk. Thank You.*

F. COUNCILOR COMMENTS/ ANNOUNCEMENTS

G. MATTERS FROM THE MAYOR

- 1. Proclamation Honoring the N.M. Hispano Music Association on their 26th Anniversary
- 2. Certificate & Acknowledgment of Employee of the Month of January 2017 presented to Joseph Martinez Facilities Custodian of the City of Española.

H. COUNCILOR APPOINTED LIAISONS REPORTS

- 3. E911, Redi-NET, North Central Regional Transit District (NCRTD), North Central Solid Waste Authority (NCSWA), Greater Española Valley Community Development Corporation (GEVCDC), Northern New Mexico Implementation Team (NNMIT), Northern Rio Grande National Heritage Area (NRGNHA) Jemez y Sangre Regional Water Plan Steering Committee (JSRWSPC), Regional Coalition of LANL Communities (RCLC), Veterans Commission, Española Fiesta "Where Cultures Unite"

I. CONSENT AGENDA

- 4. 12.13.16 City Council Meeting Minutes

J. CITY MANAGER REPORT

- 5. City Overview - *City Manager Mark Trujillo*

K. PUBLIC HEARING

- 6. **Ordinance 2017-01;** An Ordinance of the City of Española, New Mexico, Authorizing the execution and delivery of a loan agreement and intercept agreement by and between the city of Española, New Mexico (the "governmental unit") and the New Mexico finance authority (the "finance authority"), in the principal amount of five million ninety-one thousand thirty-one dollars (\$5,091,031 for the purpose of refunding 2007 public project revolving fund loan no. 1879-pp, issued to defray the cost of acquiring, constructing and improving infrastructure projects for the governmental unit, paying a loan processing fee and funding a loan agreement reserve account, and evidencing the special limited obligation of the governmental unit to repay the principal amount of \$5,091,031, together with interest thereon; providing for the pledge and payment of the principal and interest due under the loan agreement solely from the municipal hold harmless gross receipts tax imposed pursuant to section 7-19d-18, NMSA 1978, and distributed to the governmental unit by the state taxation and revenue department; providing for the distribution of municipal hold harmless gross receipts tax to be redirected by the state taxation and revenue department to the finance authority or its assigns for the payment of principal and interest due on the loan agreement pursuant to an intercept agreement; ratifying actions heretofore taken; repealing all action inconsistent with this ordinance; and authorizing the taking of other actions in connection with the execution and delivery of the loan agreement and intercept agreement. - *Administrative Services Director Jessica Ortiz*

L. ITEMS PROPOSED FOR COUNCIL CONSIDERATION/DISCUSSION ITEMS (ACTION ITEMS)

7. **City of Española Resolution 2017-01**, A Resolution Adopting the Annual Financial Audit Report for Fiscal Year Ending in June 30th, 2016. – *Administrative Services Director Jessica Ortiz*
8. **Consideration of City of Española Insurance Broker of Record RFP No. 2016-003** awarding to Brown and Brown Insurance for the Contracting of General Liability - *Grants Manager Diahann Jacquez*
9. **Approval of (BAR) Budget Adjustment Resolution 2017-02**; a resolution approving a budget adjustment request increasing revenues and expenditures to fund 314 in the amount of \$95,000 for the acquisition of real property located at; 402, 406, 408, n. railroad avenue, Española, N.M. and a budget adjustment request increasing revenues and expenditures in the amount of \$539,195.00 providing matching funds for EPA funding – *Administrative Services Director Jessica Ortiz*
10. **Approval of (BAR) Budget Adjustment Resolution 2017-03**, A resolution amending Resolution 2015-18, reaffirming funding from prior year cash for the purpose of I.T. infrastructure improvements. - *City Clerk Anna Squires & Administrative Services Director Jessica Ortiz*
11. **Consideration of Lease Agreement between the City of Española and Digital Video Networks LLC**, Albuquerque N.M., for the purpose of I.T. infrastructure improvements. - *I.T. Manager Michael Martinez & City Clerk Anna Squires*

M. VIDEO PRESENTATION

12. **Light Hearted Video Presentation - by City Staff**

N. ADJOURNMENT

STATE LAW

An Executive Session may be called at any time during the meeting. Pursuant to New Mexico Open Meetings Act Section 10-15-1 (H) Subsections;

- (1) Meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;
- (2) Limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this paragraph is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;
- (3) Deliberations by a public body in connection with an administrative adjudicatory proceedings. For purposes of this paragraph, "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;
- (4) The discussion of personally identifiable information about any individual student, unless the student or the student's parent or guardian requests otherwise;
- (5) Meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;
- (6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source is discussed and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process.
- (7) Meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become participant;
- (8) Meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body.

DISABILITY

The Governing Body may revise the order of the agenda items considered at this Open Meeting. If you are an individual with a disability who is in need of an amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the City Clerk at; (505)747-6019 at least three days prior to the meeting.

STATE OF NEW MEXICO
CITY OF ESPAÑOLA
COUNTY OF RIO ARRIBA

I, Anna Squires, the duly qualified and acting City Clerk of the City of Española, 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 City Council of the City of Española, New Mexico (the "Governing Body"), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at the City Council Chambers, 405 North Paseo de Oñate, Española, New Mexico, on January 10, 2017, at the hour of 6:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of January, 2017.

CITY OF ESPAÑOLA, NEW MEXICO

By: 
Anna Squires, City Clerk

[SEAL]



Affidavit of Publication

State of New Mexico
County of Rio Arriba

I, Robert Trapp, being first duly sworn, declare and say I am the Publisher of the *Rio Grande SUN*, a weekly newspaper published in the English language and having a general circulation in the County of Rio Arriba, State of New Mexico, and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 of the Session Laws of 1937. The publication, a copy of which is hereto attached, was published in said paper once each week for 1 consecutive weeks and on the same day of each week in the regular issue of the paper during the time of publication and the notice was published in the newspaper proper, and not in any supplement. The first publication being on the

22 day of December, 2016

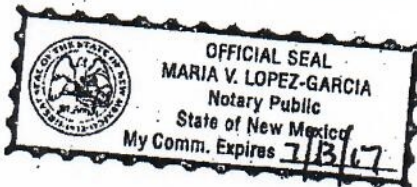
and the last publication on the 22 day of

December, 2016. Payment for said advertisement has been duly made, or assessed as court costs. The undersigned has personal knowledge of the matters and things set forth in this affidavit.

Robert Trapp Publisher

Subscribed and sworn to before me this 22 day of December A.D. 2016

Maria V Lopez Garcia
Maria V. Lopez Garcia /Notary Public
My commission expires 13 July 2017



PO# 44857
CITY OF ESPAÑOLA,
NEW MEXICO
NOTICE OF PUBLIC
HEARING AND
CONSIDERATION OF
ORDINANCE 2017-01

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2017-01, which will be considered for adoption by the Governing Body of the City of Española, New Mexico, at its regular meeting on January 10, 2017, commencing at 6:00 p.m. A complete copy of the proposed Ordinance is available for public inspection during normal and regular business hours in the office of the City Clerk, 405 North Paseo de Oñate, Española, New Mexico 87532.

The title of the proposed Ordinance is:

CITY OF ESPAÑOLA,
NEW MEXICO
ORDINANCE
NO. 2017-01

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ESPAÑOLA, NEW MEXICO (THE

"GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF FIVE MILLION NINETY-ONE THOUSAND THIRTY-ONE DOLLARS (\$5,091,031 FOR THE PURPOSE OF REFUNDING 2007 PUBLIC PROJECT REVOLVING FUND LOAN NO. 1879-PP, ISSUED TO DEFRAID THE COST OF ACQUIRING, CONSTRUCTING AND IMPROVING INFRASTRUCTURE PROJECTS FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$5,091,031, TOGETHER WITH INTEREST THEREON; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX IMPOSED PURSUANT TO SECTION 7-18D-18, NMSA 1978, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.
(Published December 22, 2016)

Payment received at Rio G

Date 2/17/17

By Maria Char

Affidavit of Publication

State of New Mexico
County of Rio Arriba

PO# 44857
CITY OF ESPAÑOLA,
NEW MEXICO NOTICE
OF ADOPTION OF
ORDINANCE 2017-01

NMSA 1976.
(Published January 19,
2017)

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2017-01, duly adopted and approved by the Governing Body of the City of Española, New Mexico, on January 10, 2017. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours in the office of the City Clerk, 405 North Paseo de Oñate, Española, New Mexico 87532.

The title of the Ordinance is: CITY OF ESPAÑOLA, NEW MEXICO ORDINANCE NO. 2017-01, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF ESPAÑOLA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF FOUR MILLION TWO HUNDRED NINETY THOUSAND DOLLARS (\$4,290,000) FOR THE PURPOSE OF REFUNDING 2007 PUBLIC PROJECT REVOLVING FUND LOAN NO. 1879-PP, ISSUED TO DEFRAY THE COST OF ACQUIRING, CONSTRUCTING AND IMPROVING INFRASTRUCTURE PROJECTS FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT, AND EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO REPAY THE PRINCIPAL AMOUNT OF \$4,290,000, TOGETHER WITH INTEREST THEREON, PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE

I, Robert Trapp, being first duly sworn, declare and say I am the Publisher of the *Rio Grande SUN*, a weekly newspaper published in the English language and having a general circulation in the County of Rio Arriba, State of New Mexico, and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 of the Session Laws of 1937. The publication, a copy of which is hereto attached, was published in said paper once each week for

1 consecutive weeks and on the same day of each week in the regular issue of the paper during the time of publication and the notice was published in the newspaper proper, and not in any supplement. The first publication being on the

19 day of January, 2017

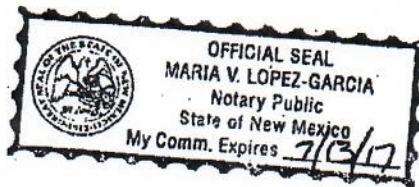
and the last publication on the 19 day of

January, 2017. Payment for said advertisement has been duly made, or assessed as court costs. The undersigned has personal knowledge of the matters and things set forth in this affidavit.

Robert Trapp Publisher

Subscribed and sworn to before me this 19 day of January A.D. 2017

Maria V Lopez Garcia
Maria V. Lopez Garcia /Notary Public
My commission expires 13 July 2017



125 fin. _____ .75
_____ line. _____
_____ .00
_____ 83.75
_____ 17
_____ .92
Payment received _____
Date _____
By Maria V Lopez Garcia

STATE OF NEW MEXICO
CITY OF ESPAÑOLA
COUNTY OF RIO ARRIBA

The City Council (the "Governing Body") of the City of Española, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body at the City Council Chambers, 405 North Paseo de Oñate, Española, New Mexico being the meeting place of the Governing Body for the regular meeting held on the 10th day of January, 2017, at the hour of 6:00 p.m. Upon roll call, the following members were found to be present:

Present:

Mayor Alice Lucero

Mayor Pro Tem Adrianna Ortiz

Councilor Peggy Sue Martinez

Councilor Pedro Valdez

Councilor Manuel J. Martinez

Councilor John Hernandez

Councilor Robert Seeds

Absent:

Councilor Dennis Tim Salazar

Councilor Michelle R. Martinez

Also Present:

City Manager Mark Trujillo

City Clerk Anna Squires

Thereupon, there was officially filed with the City Clerk a copy of a proposed ordinance in final form.