AGENDA

... for the Regular Meeting of the Farmington City Council to be held at 6:00 p.m.,
Tuesday, April 23, 2019 in the Council Chamber, City Hall, 800 Municipal Drive,
Farmington, New Mexico...

1. Roll Call and Convening the Meeting;

2. Invocation: Pastor Burson Corely of College Heights Baptist Church.

3. Pledge of Allegiance;

4. Acceptance of Consent Agenda: Those items on the agenda that are marked with
an asterisk (*) have been placed on the Consent Agenda and will be voted on
without discussion with one motion. If any item proposed does not meet with
approval of all Councilors or if a citizen so requests, that item will be heard under
Business from the Floor.

5. *Approval of Minutes for the Regular Meeting of the City Council held April 9,
2019. ........................................................................................................8

6. *Approval for Adoption of Resolution No. 2019-1708 authorizing the execution and
delivery of a Local Government Planning Grant Agreement between the
City and the New Mexico Finance Authority for funding in the amount of
$50,000 for the purpose of financing the costs of updating the City's
Metropolitan Redevelopment Area Plan. .....................................................1

7. *Approval for Adoption of Resolution No. 2019-1709 requesting a time extension
from the New Mexico Department of Transportation for the Foothills Drive
Enhancement project (Phase II). .................................................................2

8. *Approval of Warrants up to and including April 20, 2019.

9. Recognition of the John Oliphant/Taco Bell Teen Center at the Farmington Boys &
Girls Club for being named New Mexico’s Teen Center Program of the
Year, AND

Recognition of Mariah Johnson for being named New Mexico’s Junior Youth of the
Year. (Mayor)

10. Consideration and Acceptance of the Gold Star Monument project (Shaña Reeves
and Gary Smouse)

11. New Business:

(a) Mayor

(1) Reappointments to the Community Relations Commission and
appointments to the Planning and Zoning Commission and the
Airport Advisory Commission.
(2) Consideration of financially participating in an engineering plan to be developed by the Southwest Colorado Council of Governments regarding the creation of a fiber backbone loop that will increase redundancy in regional broadband fiber connectivity. The specific proposal is $15,000 to be funded the Community Transformation and Economic Diversification (CTED) Fund.

(b) Councilors

(c) City Manager

(d) City Attorney

(1) Resolution No. 2019-1710
-relying to the natural gas supply agreement between the City of Farmington and the New Mexico Municipal Energy Acquisition Authority, as amended by a First Amendment; authorizing action necessary or advisable to obtain a gas discount pursuant to the supply agreement, as amended, including the execution and delivery of certificates and agreements relating to the foregoing; ratifying, approving, and confirming prior action taken related to the foregoing; and repealing action inconsistent herewith.  

(2) Resolution No. 2019-1711
-declaring the intent of the City Council of the City of Farmington, New Mexico, to consider for adoption an amendatory ordinance amending and restating Ordinance No. 2019-1315; authorizing the issuance of the City of Farmington, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019, in an aggregate principal amount not to exceed $13,500,000 for the purposes of defraying the costs of designing, engineering, constructing, acquiring and improving streets and traffic improvements, and paying costs of issuance of the Series 2019 Bonds; authorizing the engagement of a municipal advisor and bond counsel in connection therewith; and ratifying the submittal for publication of a notice of meeting, public hearing and intent to consider an ordinance authorizing the Series 2019 Bonds in a newspaper of general circulation within the city of Farmington.  

(3) Ordinance No. 2019-02 – Permission to Publish
-of the New Mexico Municipal Energy Acquisition Authority authorizing the issuance and sale of its Gas Supply Revenue Bonds, Series 2019B in an aggregate principal amount not to exceed $170,000,000 ("Series 2019B Bonds") to pay costs of acquiring a long-term, prepaid supply of natural gas pursuant to a Prepaid Gas Agreement between the authority and Royal Bank of Canada and to pay costs of issuance of the Series 2019B Bonds; providing for the issuance of the Series 2019B Bonds pursuant to a supplemental trust indenture between the authority and Wells Fargo Bank, National Association, as Trustee; providing for the payment of the Series 2019B Bonds from the revenues paid pursuant to gas
supply agreements between the Authority and the Las Cruces Utility Board on behalf of the City of Las Cruces, the City of Farmington and the incorporated County of Los Alamos, New Mexico (each a "gas purchaser") and such other revenues and funds as are specifically pledged to such payment under the indenture; authorizing the execution and delivery of amendments to a prepaid gas agreement, the gas supply agreements by and between the Authority and each of the gas purchasers, and related documentation previously entered into by the Authority; delegating authority to certain officers to determine the final terms of the bonds and features of the transaction documents pursuant to a pricing certificate to be executed and delivered by such officers; authorizing the execution and delivery of the supplemental indenture and a Bond Purchase Agreement, [[a liquidity facility]], and a Continuing Disclosure Agreement with respect to the Series 2019B Bonds; approving the preparation, distribution and use of a Preliminary Official Statement and an Official Statement for the bonds; making findings related to the foregoing; providing that, if one or more of the gas purchasers determines not to participate in the transaction, this ordinance and the relevant transaction documents will be amended or modified as necessary to reflect the participation of the participating gas purchasers; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this ordinance and the issuance of the bonds and related matters.

(4) Proposed Ordinance – Discussion
-amending and restating Ordinance No. 2019-1315; authorizing the issuance, sale and delivery of the City of Farmington, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019, in an aggregate principal amount not to exceed $13,500,000 for the purpose of defraying the costs of designing, engineering, constructing, acquiring and improving streets and traffic improvements, and paying costs of issuance of the Series 2019 Bonds; providing that the bonds will be payable from Municipal Gross Receipts Tax Revenues distributed to the City pursuant to Section 7-1-6.12 NMSA 1978, providing that the maturity dates, principal amounts, interest rates, redemption provisions and other details of the bonds will be established in a bond purchase agreement and pricing certificate, and delegating authority to the City Manager and City Administrative Services Director to approve the final terms of the bonds and to execute and deliver the bond purchase agreement; providing for the execution of the bonds and other documents and agreements relating to the bonds by authorized officers of the City; ratifying action previously taken in connection therewith; and repealing all ordinance in conflict herewith. (Final Action May 7, 2019)
12. Business from the Floor:

(1) Items removed from Consent Agenda for discussion.

(2) Any other Business from the Floor.


AGENDA ITEM SUPPORT MATERIALS ARE AVAILABLE FOR INSPECTION AND/OR PURCHASE AT THE OFFICE OF THE CITY CLERK, 800 MUNICIPAL DRIVE, FARMINGTON, NEW MEXICO.

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk’s Office at 599-1106 or 599-1101 prior to the meeting so that arrangements can be made.
AUTHORIZING THE EXECUTION AND DELIVERY OF A LOCAL GOVERNMENT PLANNING GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), AND CITY OF FARMINGTON (THE "GRANTEE"), IN THE AMOUNT OF FIFTY THOUSAND DOLLARS ($50,000) EVIDENCING AN OBLIGATION OF THE GRANTEE TO UTILIZE THE GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE METROPOLITAN REDEVELOPMENT ACT PLAN AND SOLELY IN THE MANNER DESCRIBED IN THE GRANT AGREEMENT; CERTIFYING THAT THE GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE GRANT AGREEMENT.

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

WHEREAS, the Grantee is a political subdivision of the State, being a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended; and

WHEREAS, the Grantee is qualified to receive the Planning Grant pursuant to the Finance Authority's Rules Governing the Local Government Planning Fund and NMSA 1978, § 6-21-6.4, as amended; and

WHEREAS, the Governing Body hereby determines that the Project may be financed with amounts granted pursuant to the Grant Agreement, that the Grant Amount, together with and other moneys available to the Grantee, is sufficient to complete the Project, and that it is in the best interest of the Grantee and the public it serves that the Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Grant Agreement; and

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

WHEREAS, the Grantee acknowledges and understands that the Planning Grant must be expended and a Planning Document must be completed within one (1) year from the Closing Date, or the Grantee will forfeit the ability to draw Grant funds from the Local Government Planning Fund; and

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

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

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Grant Amount for the purposes described and according to the restrictions set forth in the Grant Agreement; and (ii) the authorization, execution and delivery of the Grant Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMINGTON, NEW MEXICO:

Section 1. Definitions. All terms used herein have the same definition as contained in the draft Grant Agreement, dated May 3, 2019.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Grantee and officers of the Grantee, directed toward the Project and the execution and delivery of the Grant Agreement, shall be and the same hereby is ratified, approved and confirmed.

Section 3. Authorization of the Project and the Grant Agreement. The Project and the method of funding the Project through execution and delivery of the Grant Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Grantee and the public it serves.

Section 4. Findings. The Governing Body on behalf of the Grantee hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to update the 2006 plan to meet revitalization efforts.

B. The costs of the Project are beyond the local control and resources of the Grantee.

C. The Project and the execution and delivery of the Grant Agreement pursuant to the Act to provide funds for the financing of the Project are in the interest of the public health, safety and welfare of the public served by the Grantee.

D. The Grantee will perform (or cause to be performed) the Project with the proceeds of the Planning Grant, and will utilize the Project for the purposes set forth in the Grant Agreement.

E. The Grantee will forfeit the Planning Grant if the Grantee fails to utilize the Grant Amount within one (1) year of the Closing Date.

Section 5. Grant Agreement—Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of a majority of a quorum of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the
Grantee and performing the Project, it is hereby declared necessary that the Grantee execute and deliver the Grant Agreement evidencing the Grantee’s acceptance of the Grant Amount of Fifty Thousand Dollars ($50,000) to be utilized solely for the Project and solely in the manner and according to the restrictions set forth in the Grant Agreement, the execution and delivery of which are hereby authorized. The Grantee shall use the proceeds of the Grant to finance the performance of the Project. The Project will be owned by the Grantee and will be utilized by the Grantee as set forth in the Grant Agreement.

B. Detail. The Grant Agreement shall be in substantially the form of the Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of Fifty Thousand Dollars ($50,000).

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

Section 7. Disposition of Proceeds; Completion of Acquisition of the Project.

A. Grant Account. The Grantee hereby consents to creation of the Grant Account by the Finance Authority and approves of the deposit of the Grant Amount into the Grant Account. Until the Completion Date, the money in the Grant Account shall be used and paid out solely for the purpose of the Project in compliance with applicable law and the provisions of the Grant Agreement.

B. Completion of Acquisition of the Project. The Grantee shall proceed to acquire and complete the Project with all due diligence. Upon the Completion Date, the Grantee shall execute a certificate substantially in the form attached as Exhibit “C” to the Grant Agreement stating that acquisition of and payment for the Project have been completed. As soon as practicable and, in any event, not more than sixty (60) days after the Completion Date, any balance remaining in the Grant Account shall be transferred and returned to the Local Government Planning Grant Fund.

C. Finance Authority Not Responsible. The Finance Authority shall in no manner be responsible for the application or disposal by the Grantee or by the officers of the Grantee of the funds derived from the Grant Agreement or of any other funds held by or made available to the Grantee’s in connection with use of the Project.

Section 8. 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 Grant Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are
hereby individually authorized to do all acts and things required of them by this Resolution and the Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Grant Agreement, including, but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Grant Agreement.

Section 9. Amendment of Resolution. This Resolution after its adoption may be amended without receipt by the Grantee of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 10. Resolution Irrepealable. After the Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations of the Grantee under the Grant Agreement shall be fully discharged, as herein provided.

Section 11. 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 12. Repealer Clause. All bylaws, orders, resolutions, 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 13. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Grantee kept for that purpose, authenticated by the signatures of the Mayor and Deputy City Clerk of the Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

Section 14. Execution of Agreements. The City of Farmington through its Governing Body agrees to authorize and execute all such agreements with the Finance Authority as are necessary to consummate the Grant contemplated herein and consistent with the terms and conditions attached hereto.

PASSED, APPROVED AND ADOPTED this 23rd day of April, 2019.

ATTEST:

Nate Duckett, Mayor

Andrea Jones, Deputy City Clerk
$50,000
PLANNING GRANT AGREEMENT
dated
May 3, 2019
by and between
NEW MEXICO FINANCE AUTHORITY
and
CITY OF FARMINGTON
PLANNING GRANT AGREEMENT

THIS PLANNING GRANT AGREEMENT (the “Grant agreement”), dated May 3, 2019, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”) and the CITY OF FARMINGTON (the “Grantee”).

WITNESSETH:

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

WHEREAS, NMSA 1978, § 6-21-6.4, as amended, creates the Local Government Planning Fund to be administered by the Finance Authority to make Grants to qualified entities to develop economic development plans and pay administrative costs of the local government planning fund program; and

WHEREAS, Grantee is a political subdivision of the State, being a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended; and

WHEREAS, the Grantee is qualified to receive the Planning Grant pursuant to the Finance Authority’s Rules and NMSA 1978, § 6-21-6.4, as amended; and

WHEREAS, the Grantee has applied to the Finance Authority for Planning Grant (as defined below) funding and has determined that it is in the best interest of the Grantee and the public it serves that the Grantee enter into this Grant Agreement with the Finance Authority and accept a grant in the amount of Fifty Thousand Dollars ($50,000) from the Finance Authority to carry out the Project, as more fully described in Exhibit “A” attached hereto; and

WHEREAS, the Grantee acknowledges and understands that the Planning Grant must be expended and the Planning Documents must be completed within one (1) year from the Closing Date, or the Grantee will forfeit the ability to draw Grant funds from the Local Government Planning Fund; and

WHEREAS, the Grantee is prepared to perform all its obligations and to observe and obey all restrictions on the use of the Grant set forth in this Grant Agreement.

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

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

"Agreement Term" means the term of this Grant Agreement as provided under Article III of this Grant Agreement.

"Authorized Officers" means in the case of the Grantee the any one or more of the Mayor, City Manager and Deputy City Clerk thereof, and in the case of the Finance Authority the Chairperson, Vice-Chairperson 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.

"Closing Date" means the date of execution, delivery and funding of this Grant Agreement.

"Event of Default" means one or more events of default as defined in Article IX of this Grant Agreement.

"Finance Authority" means the New Mexico Finance Authority.

"Force Majeure" means any act of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes, lockouts or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party’s control.

"Governing Body" means the City Council of the Grantee, or any future governing body of the Grantee.

"Grant or Grant Amount" means the sum of Fifty Thousand Dollars ($50,000).

"Grant Account" means the account in the name of the Grantee established pursuant to this Grant Agreement and held by the Finance Authority for deposit of the Grant Amount for disbursement to the Grantee for payment of the costs of the Project.

"Grant Agreement" means this grant agreement and any amendments or supplements hereto, including the Exhibits attached hereto.

"Grantee" means the City of Farmington, San Juan County, New Mexico.

"Herein," "hereby," "hereunder," "hereof," "hereinabove," "hereafter" and similar words refer to this entire Grant Agreement and not solely to the particular section or paragraph of this Grant Agreement in which such word is used.
“Local Government Planning Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Local Match” means $0.


“Planning Document” means a written document in the form of a Metropolitan Redevelopment Act Plan created for the purpose of evaluating and estimating the costs of alternatives to meet the Grantee’s public project needs, namely updating the 2006 plan to meet revitalization efforts.

“Planning Grant” or “Grant” means the amount provided to the Grantee pursuant to the Grant Agreement for the purpose of funding the Project, and is equal to the Grant Amount.

“Policy” or “Policies” means the New Mexico Finance Authority Local Government Planning Fund Project Management Policies.

“Project” means the preparation of the Planning Document as more particularly described in Exhibit “A” hereto.

“Resolution” means the Grantee’s Resolution No. 2019-1708 adopted on April 23, 2019, authorizing the Grantee’s acceptance of the terms and conditions of this Grant Agreement.

“Rules” mean the Rules governing the Local Government Planning Fund as adopted by the Board of Directors of the Finance Authority, as amended and supplemented from time to time.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1. Representations, Warranties and Covenants of the Grantee. The Grantee represents, warrants and covenants as follows:

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

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

(c) **Authorization of Grant Agreement.** The Grantee is a political subdivision of the State, being a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended. Pursuant to the laws of the State, as amended and supplemented from time to time, the Grantee is authorized to enter into the transactions contemplated by this Grant Agreement and to carry out its obligations hereunder. The Grantee has duly authorized and approved the execution and delivery of this Grant Agreement and the other documents related to the transaction.

(d) **Use of Grant Agreement Proceeds.** The Grantee shall apply the proceeds of the Grant solely to the acquisition and completion of the Project, shall not use the Grant proceeds for any other purpose, and shall comply with all applicable ordinances and regulations, if any, and any and all applicable laws relating to the Project. The Grantee shall immediately apply all Grant proceeds disbursed to it toward the Project. The Grantee shall use the Grant proceeds and complete the Planning Document within one (1) year of the Closing Date or shall forfeit the full amount of the Grant.

(e) **Selection of Contractors.** All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Grantee.

(f) **Completion of Project.** The Project will consist of the preparation of the Planning Document to update the 2006 plan addressing revitalization and will be completed so as to comply with all applicable ordinances and regulations, if any, and any and all applicable laws, rules, and regulations of the State relating to the acquisition and completion of the Project and to the use of the Grant proceeds. If requested by the Finance Authority, the Grantee will allow the New Mexico Economic Development Department or other appropriate agency of the State, or the Finance Authority to assist with completion of the Project and to review the Project as completed to assure compliance with applicable laws, rules and regulations of the State. The completed Planning Document must be in a form acceptable to and approved by the Finance Authority, in its sole discretion.

(g) **Necessity of Project.** The completion of the Project under the terms and conditions provided in this Grant Agreement is necessary, convenient and in furtherance of the
governmental purposes of the Grantee and is in the best interest of the Grantee and the public it serves.

(h) **Legal, Valid and Binding Obligation.** The Grantee has taken all required action necessary to authorize the execution and delivery of this Grant Agreement and this Grant Agreement constitutes a legal agreement of the Grantee enforceable in accordance with its terms.

(i) **Benefit to Grantee.** The Project will at all times be used for the purpose of benefiting the Grantee and the public it serves as a whole.

(j) **Grant Amount Does Not Exceed Project Cost.** The Grant Amount as provided herein does not exceed the cost of the Project.

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

(l) **Irrevocability of Grant Agreement.** The terms of this Grant Agreement shall be irrevocable until the Project has been fully acquired and completed, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Grant Agreement in a manner not permitted or contemplated by the terms hereof.

(m) **No Litigation.** To the best knowledge of the Grantee, no litigation or proceeding is pending or threatened against the Grantee or any other person affecting the right of the Grantee to execute this Grant Agreement or to comply with its obligations under this Grant Agreement. Neither the execution of this Grant Agreement by the Grantee nor compliance by the Grantee 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.

(n) **Occurrence of Event of Default.** No event has occurred and no condition exists which, upon the execution and delivery of this Grant Agreement, would constitute an Event of Default on the part of the Grantee hereunder.

(o) **Grantee’s Existence.** The Grantee will maintain its legal identity and existence for the Agreement Term, unless another political subdivision by operation of law succeeds to the liabilities, rights, and duties of the Grantee without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.
(p) Reports to Finance Authority. The Grantee shall report at least semi-annually to the Finance Authority on the status of the Planning Document.

(q) Records. The Grantee shall properly maintain separate project accounts in accordance with generally accepted accounting principles and conduct an annual audit or review of the Grantee’s financial records related to the Project.

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

(a) The Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality 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 Grant Agreement and, by proper action, has duly authorized the execution and delivery of this Grant Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of the Finance Authority enforceable in accordance with its terms.

ARTICLE III: AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate upon the earliest of the following events: a determination by the Finance Authority that (a) the Grantee is unable to proceed with the Project for the foreseeable future or has failed to commence the Project in a reasonably timely manner, (b) the Grant or any portion thereof is not necessary for the Project (in which case the Grant Amount may be modified by the Finance Authority) or (c) the Grantee has failed to utilize the Planning Grant to complete the Planning Document within one year of the Closing Date.

ARTICLE IV: GRANT; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the amount shown on Exhibit “A” into the Grant Account to be disbursed by the Finance Authority pursuant to Section 6.2 of this Grant Agreement at the direction of the Grantee, as needed by the Grantee to acquire and complete the Project.

ARTICLE V: GRANT TO THE GRANTEE

Section 5.1. Grant to the Grantee. The Finance Authority hereby grants and the Grantee hereby accepts an amount equal to the Grant Amount. The Finance Authority shall establish and maintain, on behalf of the Grantee, a Grant Account, which Grant Account shall be kept separate and apart from all other accounts of the Finance Authority. The Grantee hereby pledges to the Finance Authority all its rights, title and interest in the funds held in the Grant Account for the purpose of securing the Grantee’s obligations under this Grant Agreement. Funds in the Grant Account shall be disbursed as provided in Sections 6.2 and 6.3 hereof.
Section 5.2. No General Obligation. No provision of this Grant Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Grantee within the meaning of any constitutional or statutory debt limitation.

Section 5.3. Investment of Moneys in Grant Account. Money on deposit in the Grant Account may be invested by the Finance Authority for the credit of the Local Government Planning Fund.

ARTICLE VI: THE PROJECT

Section 6.1. Agreement to Acquire and Complete the Project. The Grantee hereby agrees that in order to effectuate the purposes of this Grant Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire and complete the Project lawfully, efficiently and within one (1) year of the Closing Date.

Section 6.2. Disbursements from the Grant Account. So long as no Event of Default shall occur, the Finance Authority shall disburse moneys from the Grant Account, either to the Grantee or to vendors and contractors, as determined by the Finance Authority in its sole discretion, upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit “B” attached hereto signed by an Authorized Officer of the Grantee, supported by certification by the Grantee’s project architect, engineer, or other such authorized representative of the Grantee acceptable to the Finance Authority that the amount of the disbursement request represents the progress of completion, acquisition or other Project related activities accomplished as of the date of the disbursement request. The Grantee shall provide such records or access to the Project as the Finance Authority, in its sole discretion, may request in connection with the approval of the Grantee’s disbursement requests made hereunder. No disbursement from the Grant Account may be made without receipt of evidence of the Local Match.

Section 6.3. Determination of Eligibility as condition Precedent to Disbursement. Prior to the disbursement of the Grant Amount or any portion thereof, the Finance Authority shall have determined that the Grantee has met the readiness to proceed requirements established for the Grant by the Finance Authority and no Event of Default shall have occurred. No disbursement shall be made from the Grant Account except upon a determination by the Finance Authority that such disbursement is for payment of Project expenses, and that the disbursement does not exceed any limitation upon the amount payable.

Section 6.4. Reimbursement for Prior Expenditures. The Finance Authority, so long as no Event of Default shall occur and upon presentation of the Grantee’s disbursement request with such certification and records as are required in accordance with Section 6.2 hereof, may disburse moneys from the Grant Account for reimbursement of Project expenses incurred after the Finance Authority Board of Directors approved the grant on February 28, 2018.

Section 6.5. Completion of Disbursement of Grant Funds. Upon completion of disbursement of the Grant Amount, an Authorized Officer of the Grantee shall deliver a certificate of completion, substantially in the form attached to this Grant Agreement as Exhibit “C”, to the Finance Authority stating that, to the best of the Authorized Officer’s knowledge the
Project has been completed and the entire Grant Amount has been disbursed in accordance with the terms of this Grant Agreement. If any portion of the Grant Amount remains upon the delivery of the certificate of completion, the Finance Authority may, in its sole discretion, modify this Grant Agreement and reduce the amount of the Grant.

ARTICLE VII: COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1. Further Assurances and Corrective Instruments. The Finance Authority and the Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the terms and intention hereof.

Section 7.2. Finance Authority and Grantee Representatives. Whenever under the provisions of this Grant Agreement the approval of the Finance Authority or the Grantee is required, or the Grantee 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 Grantee by an Authorized Officer of the Finance Authority or the Grantee, as the case may be, and any party hereto shall be authorized to act or rely on any such approval or request.

Section 7.3. Requirements of Law. During the Agreement Term, the Grantee shall observe and comply promptly with all applicable federal, State and local laws and regulations affecting the Project, and all current and future orders of all courts and agencies of the State having jurisdiction over the Project and matters related to the Project.

ARTICLE VIII: NON-LIABILITY OF FINANCE AUTHORITY FOR ACTS OR OMISSIONS OF THE GRANTEE; INDEMNIFICATION

Section 8.1. Non-Liability of Finance Authority. The Finance Authority shall not be liable in any manner for the Project, Grantee’s use of the Grant, the ownership, operation or maintenance of the Project, or any failure to act properly by the owner or operator of the Project.

Section 8.2. Indemnification of Finance Authority. The Finance Authority shall not be responsible for any act or omission of the Grantee upon which any claim, by or on behalf of any person, firm, corporation or other legal entity may be made, whether arising from the establishment or modification of the Project or otherwise. To the extent permitted by law, the Grantee shall and hereby agrees to indemnify and save harmless the Finance Authority and its designee, if any, from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition and completion of the Project. In the event of any action or proceeding brought on any such claim, upon notice from the Finance Authority or its designee, Grantee shall defend the Finance Authority and its designee, if any, in any such action or proceeding.
ARTICLE IX: EVENTS OF DEFAULT AND REMEDIES

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

(a) Use of the Grant Amount, or any portion thereof, by the Grantee for purposes other than the Project;

(b) Failure by the Grantee to utilize the Grant proceeds to complete the Project within one (1) year of the Closing Date;

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

(d) Any warranty, representation or other statement by or on behalf of the Grantee contained in this Grant Agreement or in any instrument furnished in compliance with or in reference to this Grant Agreement is false or misleading in any material respect.

Section 9.2. Remedies on Default. Whenever any Event of Default has occurred and is continuing, and subject to Section 9.3 hereof, the Finance Authority may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Grantee in this Grant Agreement:

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

(b) Terminate this Grant Agreement;

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

(d) Demand that the Grantee immediately repay the Grant Amount or any portion thereof if such funds were not utilized in accordance with this Grant Agreement;
(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority; or

(f) Take whatever other action at law or in equity may appear necessary or desirable to enforce any other of its rights hereunder.

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

Section 9.3 Limitations on Remedies. A judgment requiring repayment of money entered against the Grantee may reach any available funds of the Grantee to the extent permitted by law.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority to exercise any remedy reserved in this Article IX, it shall not be necessary to give any notice, other than such notice as may be required in this Article IX.

Section 9.5. Waivers of Events of Default. The Finance Authority may in its sole discretion waive any Event of Default hereunder and the consequences of such an Event of Default; provided, however, all expenses of the Finance Authority in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority on account of any Event of Default shall have been discontinued or abandoned or determined adversely, then the Finance Authority and the Grantee 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 9.6. No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE X: MISCELLANEOUS

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

City of Farmington
Attn.: City Manager
800 Municipal Drive
Farmington, New Mexico 87401

And if to the Finance Authority, then to:

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

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

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

Section 10.3. Amendments. This Grant Agreement may be amended only with the written consent of the Finance Authority and the Grantee.

Section 10.4. No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Grant Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, or against any officer, employee, director or member of the Grantee, past, present or future, as an individual so long as such individual was acting in good faith and within the scope of his or her duties. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Grantee or of the Finance Authority is hereby expressly waived and released by the Grantee and by the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 10.5. Grantee Compliance. The Finance Authority shall not be responsible for assuring the Grantee’s use of the Grant Amount or the Project for its intended purpose and shall have no obligation to monitor compliance by the Grantee with the provisions of this Grant Agreement.

Section 10.6. Severability. In the event that any provision of this Grant Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
Section 10.7. **Execution in Counterparts.** This Grant Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.8. **Applicable Law.** This Grant Agreement shall be governed by and construed in accordance with the laws of the State.

Section 10.9. **Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Grant Agreement.

[Remainder of page intentionally left blank.]

[Signature pages follow.]
IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as authorized by the Finance Authority Board of Directors on February 28, 2018, has executed this Grant Agreement in its corporate name with its corporate seal hereunto affixed and attested by its duly Authorized Officers; and the Grantee has caused this Grant Agreement to be executed in its corporate name and the seal of the Grantee 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 ______________________
        Chief Executive Officer or Designee

[SEAL]

ATTEST:

By ______________________

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

By ______________________
        Daniel C. Opperman, General Counsel

CITY OF FARMINGTON

By ______________________
        Nate Duckett, Mayor

[SEAL]

ATTEST:

By ______________________
        Andrea Jones, Deputy City Clerk

Planning Grant Agreement
Farmington, Grant No. 4614- PG

- 1.17 -
EXHIBIT “A”

TERM SHEET

Grantee: CITY OF FARMINGTON

Project Description: Preparation of a Planning Document consisting of the Metropolitan Redevelopment Act Plan updating the 2006 plan to meet revitalization efforts.

Total Grant Amount: Fifty Thousand Dollars ($50,000)

Local Match: $0

Closing Date: May 3, 2019
EXHIBIT “B”
FORM OF REQUISITION

RE: Fifty Thousand Dollars ($50,000) Planning Grant Agreement (the “Grant Agreement”) by and between the New Mexico Finance Authority (“Finance Authority”) and the City of Farmington (“Grantee”), Finance Authority Grant Number 4614-PG (the “Grant Agreement”).

Closing Date: May 3, 2019

TO: NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse funds from the Grant Account, with regard to the above-referenced Grant Agreement, the following:

NAME AND ADDRESS OF PAYEE: ____________________________

AMOUNT OF PAYMENT: $ ____________________________

PURPOSE OF PAYMENT: ____________________________

WIRING INFORMATION

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<tr>
<th>BANK NAME:</th>
<th>ACCOUNT NUMBER:</th>
<th>ROUTING NUMBER:</th>
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Each obligation, item of cost or expense mentioned herein is for the Grant made by the New Mexico Finance Authority pursuant to the Grant Agreement to the Grantee, within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Grant Account held on behalf of the Grantee. All representations contained in the Grant Agreement and the related closing documents remain true and correct and the Grantee is not in breach of any of the covenants contained therein.

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

DATED: ____________________________ By: ____________________________

Authorized Officer of the Grantee

Title: ____________________________

Planning Grant Agreement
Farmington, Grant No. 4614-PG

- 1.19 -
EXHIBIT "C"

FORM OF CERTIFICATE OF COMPLETION

RE: Fifty Thousand Dollars ($50,000) Planning Grant Agreement (the "Grant Agreement")
by and between the New Mexico Finance Authority ("Finance Authority") and the City
of Farmington ("Grantee"), Finance Authority Grant Number 4614-PG (the "Grant
Agreement").

Closing Date: May 3, 2019

TO: NEW MEXICO FINANCE AUTHORITY

I,______________________________, the_of [Name]
[Title or position]

the Grantee, hereby certify as follows:

1. The project described in the Grant Agreement (the "Project") was completed and
placed in service by the Grantee on______________________, 20__.

2. The total cost of the Project was $______________.

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

CITY OF FARMINGTON

By:______________________________

Its:______________________________
Date: April 9, 2019

TO: Mr. Rob Mayes

From: David Sypher, Public Works Director

RE: Foothills Enhancement Project, Phase 2 – Extension Request

The Foothills Enhancement Project, Phase 2 is in the design process. The Municipal Arterial Program Cooperative Agreement with NMDOT will expire June 30, 2019. Due to issues with NMDOT Right-of-Way approval, it is necessary to request an extension for the project to December 31, 2020.

Attached is the Resolution for the request.

Staff is recommending City Council approve the extension.
RESOLUTION NO. 2019-1709

A RESOLUTION REQUESTING A TIME EXTENSION FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE FOOTHILLS ENHANCEMENT PROJECT, PHASE 2, MUNICIPAL ARTERIAL PROGRAM COOPERATIVE AGREEMENT.

WHEREAS, the City of Farmington and the New Mexico Department of Transportation ("NMDOT") entered into a joint and coordinated effort for the Foothills Drive Enhancement Project, Phase 2; and

WHEREAS, the City of Farmington agrees to provide matching funds at a percentage equal to or above twenty-five percent (25%) in the amount of Sixty Thousand Dollars ($60,000) in accordance with the Local Government Road Fund Program with NMDOT’s share being One Hundred Eighty Thousand Dollars ($180,000) for a total project cost of Two Hundred Forty Thousand Dollars ($240,000); and

WHEREAS, the City of Farmington supports the project and is requesting a time extension to December 31, 2020 due to right-of-way acquisition; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY of the City of Farmington that we respectfully request a time extension for Project No. MAP-7645(913); Control No. L500301.

PASSED, APPROVED, SIGNED AND ADOPTED THIS 23rd day of April, 2019.

Nate Duckett, Mayor

SEAL

ATTEST

Andrea Jones, Deputy City Clerk
RESOLUTION NO. 2019-1710

A RESOLUTION RELATING TO THE NATURAL GAS SUPPLY AGREEMENT BETWEEN THE CITY OF FARMINGTON AND THE NEW MEXICO MUNICIPAL ENERGY ACQUISITION AUTHORITY, AS AMENDED BY A FIRST AMENDMENT; AUTHORIZING ACTION NECESSARY OR ADVISABLE TO OBTAIN A GAS DISCOUNT PURSUANT TO THE SUPPLY AGREEMENT, AS AMENDED, INCLUDING THE EXECUTION AND DELIVERY OF CERTIFICATES AND AGREEMENTS RELATING TO THE FOREGOING; RATIFYING, APPROVING, AND CONFIRMING PRIOR ACTION TAKEN RELATED TO THE FOREGOING; AND REPEALING ACTION INCONSISTENT HEREWITH.

WHEREAS, the City of Farmington (the "City") is a municipal corporate and politic organized and existing pursuant to the laws of the State of New Mexico (the "State"); and

WHEREAS, the City owns and operates a municipal electric utility system (the "Electric Utility") which comprises a part of the City's joint electric light and power, water and sanitary sewer system that supplies electricity to customers of the Electric Utility within the municipal boundaries of, or in proximity to, the City; and

WHEREAS, the Electric Utility includes generating facilities which utilize natural gas for their operations; and

WHEREAS, the City entered into a "Natural Gas Supply Agreement" for the City Electric Utility, as amended by a First Amendment (as amended, the "Gas Supply Agreement"), with the New Mexico Municipal Energy Acquisition Authority (the "Authority"), a joint powers authority organized pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7 NMSA 1978, for, among other things, the purpose of financing and acquiring long-term energy supplies, for its members, including the City; and

WHEREAS, the Council has been advised as follows (capitalized terms appearing below shall have the meanings ascribed to such terms in the Gas Supply Agreement unless otherwise indicated):

1. The natural gas deliveries made by the Authority to the City pursuant to the Gas Supply Agreement were financed with proceeds of the Authority’s Gas Supply Revenue Bonds, Series 2014 (the "2014 Bonds"), which 2014 Bonds are subject to mandatory redemption on August 1, 2019, and must be refinanced in order to enable the Authority to continue to deliver natural gas to the City at a discount; and

2. The Gas Supply Agreement provides that the City may elect to have all or a portion of its Daily Contract Quantities remarked for the Remaining Term in the event that Available Discount is less than the Minimum Discount of 37 cents per MMBtu (a "Remarketing Election"); and

3. The amount of discount that will be available through the refunding and refinancing of the 2014 Bonds (the "2019 Refunding Transaction") is a function of the pricing and final terms of the 2019 Refunding Bonds under the bond market conditions in effect on the day of pricing of the Refunding Bonds.
Bonds and will be determined at the time the 2019 Refunding Bonds are sold to Royal Bank of Canada (the “Gas Supplier”); and (4) The available discount will be increased by extending term of the Gas Supply Agreement for up to an additional 10 years and providing for the delivery of additional volumes of natural gas through the issuance by the Authority of bonds to finance the prepayment for those additional volumes (the “2019 New Money Transaction” and, together with the 2019 Refunding Transaction, the “2019 Transaction”); and (5) The 2019 Transaction cannot proceed if the City makes a Remarketing Election; and

WHEREAS, in connection with the 2019 Transaction, it will be necessary for authorized officers of the City to execute and deliver certain closing certificates and agreements, including but not necessarily limited to a general city certificate and a continuing disclosure certificate or agreement and such other certificates and agreements that may be necessary or appropriate to the City's participation with the Authority, including such certificates and agreements which may be reasonably requested in connection with the Bonds issued by the Authority (the "Closing Documentation"); and

WHEREAS, the Authority retained the Majors Group as its Municipal Advisor in connection with the issuance of the 2014 Bonds, and has retained the Majors Group for the 2019 Transaction; and

WHEREAS, the Council desires to authorize the execution, delivery and performance by the City of the Closing Documentation; and

WHEREAS, it is in the best interest of the City and its electric utility customers that the City not make a Remarketing Election if the conditions specified in Section 2 of this Resolution are satisfied.

NOW, THEREFORE, be it resolved by the Governing Body of the City of Farmington, New Mexico:

Section 1. Determination of Best Interest of Farmington Electric Utility. The Council finds and hereby determines that it is in the best interest of the City and its electric utility customers for the City to continue to obtain a discount to its natural gas costs, and that terminating deliveries of natural gas from the Authority by making a Remarketing Election is not in the best interest of the City if the discount is reasonable based on current market conditions.

Section 2. Delegation of Authority to Effect the 2019 Transaction. The Mayor, Manager and officers and employees of the City be, and hereby are, authorized and directed to take all action necessary or appropriate under the Gas Supply Agreement and in connection with the Remarketing Election, to effectuate the 2019 Transaction, including, without limiting the generality of the foregoing, the execution of the Closing Documentation, subject to the provisions of Section 3 of this Resolution.

Section 3. No Remarketing Election upon Satisfaction of Condition. The City will not make a Remarketing Election if, at the time
that the final terms of the 2019 Transaction are established, the Majors Group, as Municipal Advisor to the Authority, provides a written opinion, addressed to the Authority and the City (which may include the other member-local governments of the Authority), that the discount amount is comparable to the highest discount reasonably achievable under then-current market conditions and is otherwise in the best interests of the Authority and the City as such interests are understood by the Majors Group.

Section 4. Ratification. All prior action of the City and the respective officers, agents or employees of the City taken in connection with the Closing Documentation is hereby ratified, approved and confirmed, except to the extent that such action is inconsistent with the provisions of this Resolution or the authorization contained herein to execute and deliver the Closing Documentation.

Section 5. Severability. 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 6. Repealer. All 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 resolution, or part thereof, heretofore repealed.

Section 7. Limited Obligations. All financial obligations incurred hereunder are limited to revenues of the City's Electric Utility.

Section 8. Effective Date. This Resolution shall be effective immediately.

PASSED. APPROVED AND ADOPTED this 23rd day of April, 2019.

Nate Duckett, Mayor

SEAL

ATTEST:

Andrea Jones, Deputy City Clerk

- 3.2 -
DECLARING THE INTENT OF THE CITY COUNCIL OF THE CITY OF
FARMINGTON, NEW MEXICO, TO CONSIDER FOR ADOPTION AN AMENDATORY
ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 2019-1315;
AUTHORIZING THE ISSUANCE OF THE CITY OF FARMINGTON, NEW MEXICO
MUNICIPAL GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES
2019 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $13,500,000
FOR PURPOSES OF DEFRAYING THE COSTS OF DESIGNING, ENGINEERING,
CONSTRUCTING, ACQUIRING AND IMPROVING STREETS AND TRAFFIC
IMPROVEMENTS, AND PAYING COSTS OF ISSUANCE OF THE SERIES 2019
BONDS; AUTHORIZING THE ENGAGEMENT OF A MUNICIPAL ADVISOR AND BOND
COUNSEL IN CONNECTION THEREWITH; AND RATIFYING THE SUBMITTAL FOR
PUBLICATION OF A NOTICE OF MEETING, PUBLIC HEARING AND INTENT TO
CONSIDER AN ORDINANCE AUTHORIZING THE SERIES 2019 BONDS IN A
NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY OF FARMINGTON.

WHEREAS, Sections 3-31-1 through 3-31-12 NMSA 1978 (the “Act”),
authorize New Mexico municipalities to issue gross receipts tax revenue
bonds secured by gross receipts tax revenues; and

WHEREAS, the City Council (the “Council”) of the City of
Farmington, New Mexico (the “City”) adopted Ordinance No. 2019-1315 on
February 12, 2019 (“Ordinance No. 2019-1315”), pursuant to which it
authorized the issuance and sale of the City of Farmington, New Mexico
Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019 (the
“Bonds”) in an aggregate principal amount not to exceed $12,500,000 to
provide funds to defray the costs of designing, engineering,
constructing, acquiring and improving streets and traffic improvements,
and paying costs of issuance of the Series 2019 Bonds (the “Improvement
Project”); and

WHEREAS, the Council has been advised that it has capacity to issue
the Series 2019 Bonds in an aggregate principal amount of up to
$13,500,000, and

WHEREAS, issuance of the Series 2019 Bonds in an aggregate
principal amount of up to $13,500,000 will provide additional proceeds
will benefit the Improvement Project; and

WHEREAS the Series 2019 Bonds have not yet been issued; and

WHEREAS, the Council desires to consider for adoption an ordinance
amending and restating Ordinance No. 2019-1315 to authorize the issuance
of the Series 2019 Bonds in an aggregate principal amount of $13,500,000;
and

WHEREAS, Section 3-17-3 NMSA 1978, requires that publication of the
title and general summary of the subject matter of any proposed ordinance
be made in a newspaper of general circulation within the City at least
two weeks prior to the meeting of the Council at which the ordinance is
proposed for final passage; and
WHEREAS, a form of the Notice of Meeting, Public Hearing and Intent to Adopt an Ordinance authorizing the issuance and sale of the Bonds is attached hereto as Exhibit "A"; and

WHEREAS, the Council has engaged RBC Capital Markets, LLC as its municipal advisor, and Modrall, Sperling, Roehl, Harris & Sisk, P.A. as its bond counsel, each in connection with the Improvement Project.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMINGTON, NEW MEXICO:

Section 1. All action (not inconsistent with the provisions hereof) heretofore taken by the Council and the officers of the City directed toward the authorization, issuance and sale of the Series 2019 Bonds and the preparation, execution and submittal of the Application for purposes of financing the Improvement and Refunding Project, be and the same is hereby ratified, approved and confirmed, including, without limitation, the publication, in accordance with Section 3-17-3 NMSA 1978, as amended, to publish, in the Daily Times or other newspaper of general circulation within the City, a title and general summary of the ordinance relating to and authorizing issuance and sale of the Series 2019 Bonds at least two weeks prior to the meeting at which the Council will consider such ordinance.

Section 2. The Bonds shall be special, limited obligations to pay principal in an amount not to exceed $13,500,000 plus interest thereon.

Section 3. The Council hereby ratifies the submittal of a Notice of Meeting, Public Hearing and Intent to Adopt An Ordinance, in the form attached to this Resolution as Exhibit "A", for publication in a newspaper of general circulation within the City at least two weeks before the meeting at which the Council takes final action on the ordinance authorizing issuance and sale of the Bonds, including, if applicable, delegation of authority to the Administrative Services Director of the City to execute and deliver a bond purchase agreement containing the final terms of the Bonds.

Section 4. RBC Capital Markets, LLC is hereby engaged as municipal advisor to the City, and Modrall, Sperling, Roehl, Harris & Sisk, P.A. is hereby engaged as bond counsel to the City, each in connection with the Improvement Project.

PASSED AND ADOPTED this 23rd day of April, 2019.

Nate Duckett, Mayor

SEAL

ATTEST:

Andrea Jones, Deputy City Clerk
EXHIBIT "A"

FORM OF NOTICE OF MEETING, PUBLIC HEARING
AND INTENT TO ADOPT BOND ORDINANCE
FOR PUBLICATION

***

City of Farmington, New Mexico
Notice of Meeting, Public Hearing and Intent to Adopt Bond Ordinance

The City Council of the City of Farmington, New Mexico hereby gives notice of a regular City Council meeting for May 7, 2019 at 6:00 p.m. at Farmington City Hall, 800 Municipal Drive, Farmington, New Mexico. At such meeting the City Council will hold a public hearing concerning and will consider for adoption the Ordinance described below. Complete copies of the proposed Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Farmington City Hall, 800 Municipal Drive, Farmington, New Mexico.

The title of the proposed Ordinance is:


The title sets forth a general summary of the subject matter contained in the Ordinance. This Notice constitutes compliance with Section 3-17-3 NMSA 1978.
ORDINANCE NO. 2019-02


WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in Section 1 hereof; and

WHEREAS, the New Mexico Municipal Energy Acquisition Authority ("NMMEA" or the "Authority") has been formed by the City of Las Cruces, New Mexico and the City of Gallup, New Mexico (together, the "Members"), each a New Mexico charter municipality with municipal home-rule powers, created and existing pursuant to the Constitution and laws of the State of New Mexico (the "State"); and

WHEREAS, as charter local government entities with home-rule powers, the Members are empowered to engage in activities and transactions not expressly prohibited by State law; and
WHEREAS, the City of Las Cruces owns and operates facilities for the distribution of natural gas to retail customers within its municipal boundaries and related service area; and

WHEREAS, the City of Gallup owns and operates facilities for the distribution of electricity to retail customers within its municipal boundaries and related service area; and

WHEREAS, as home-rule municipal local governments, the Members are empowered to exercise any powers not expressly prohibited under the Constitution or statutes of the State; and

WHEREAS, the Members are authorized by the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7 NMSA 1978 (the “Act”), to create a joint powers authority for the purpose of exercising powers common to the Members, including home-rule powers; and

WHEREAS, the Secretary of the Department of Finance and Administration has approved a joint powers agreement, effective as of June 19, 2008, as amended effective September 30, 2008 (the “Joint Powers Agreement”), as required by the Act for the formation of the Authority; and

WHEREAS, the common home-rule powers of the Members include (i) entering into agreements for the financing and acquisition of long-term energy supplies as described above for sale to the gas distribution utility systems owned by Las Cruces and the Incorporated County of Los Alamos, New Mexico, to the electric utility system owned by the City of Farmington, New Mexico, and to other municipally owned gas or electric utility systems, and (ii) the issuance of revenue bonds the proceeds of which will be used to acquire a specified quantity of natural gas pursuant to a prepaid natural gas supply agreement, which powers are common powers that may be exercised through a joint powers authority as contemplated by the Act; and

WHEREAS, in 2009 the Authority entered into a Prepaid Gas Supply Agreement (the “Prepaid Gas Agreement”), under which the Authority made a one-time lump sum payment to Royal Bank of Canada (“RBC”), in its capacity as gas supplier (the “Gas Supplier”), for the purchase of a specified quantity of natural gas (the “Gas Supply”) to be delivered by the Gas Supplier to the Authority, which Gas Supply the Authority has been selling to the City of Las Cruces, the City of Farmington and the Incorporated County of Los Alamos (each, a “Gas Purchaser” and together, the “Gas Purchasers”) pursuant to Gas Supply Agreements by and between the Authority and the Gas Purchasers; and

WHEREAS, the Gas Supply Agreements provide for the sale by the Authority to the Gas Purchasers of a portion of the Gas Supply each month at a price equal to the first-of-the-month index price (the “Index Price”) for gas deliveries on the pipeline specified in the relevant Gas Supply Agreement, less a discount if and to the extent available from the revenues and other amounts available under an Indenture of Trust dated as of November 1, 2009 by and between the Authority and Wells Fargo Bank, National Association, as Trustee (the “2009 Indenture”); and

WHEREAS, for the purpose of funding the lump-sum payment to RBC under the Prepaid Agreement, the Authority issued its New Mexico
Municipal Energy Acquisition Authority Gas Supply Variable Rate Revenue Bonds, Series 2009 in an original aggregate principal amount of $780,965,000 on November 19, 2009 (the "Series 2009 Bonds"); and

WHEREAS, the issuance of revenue bonds the interest on which is excludable from gross income under the Internal Revenue Code of 1986 (the "Code") to finance the acquisition of the Gas Supply is authorized pursuant to Treasury Regulations §1.148-1(e); and

WHEREAS, in connection with the issuance of the Series 2009 Bonds, the Authority entered into, among other agreements, two interest rate exchange agreements with RBC as swap counterparty for the purpose of hedging the Authority's exposure to variable interest rate risk (the "2009 Interest Rate Swaps"); and

WHEREAS, the Prepaid Gas Agreement provides for a minimum discount of $0.20 from the market price of gas to be delivered to the Authority and the Gas Purchasers, although the actual discount amount that has been available has been approximately double the minimum discount amount; and

WHEREAS, RBC provided written notice to the Authority by letter dated October 1, 2013 (the "RBC Notice") that, as a result of new minimum standards for measuring capital adequacy imposed by the Office of Superintendent of Financial Institutions Canada, RBC had determined that it would be required to allocate additional capital in connection with the Interest Rate Swaps, and that the additional capital required to be allocated would materially and adversely affect the transactions contemplated by the Prepaid Gas Agreement, and the terms of the Prepaid Gas Agreement permit RBC, as seller, to terminate the Prepaid Gas Agreement as a result of those regulatory changes; and

WHEREAS, following the delivery of the RBC Notice, RBC presented to the Authority a proposal for refunding the Series 2009 Bonds with proceeds of a series of variable rate refunding bonds to be issued by the Authority under a new trust indenture (the "2014 Indenture") with mandatory tender features and without optional tender features (the "Restructuring" as further described herein); and

WHEREAS, under the Restructuring, the 2009 Interest Rate Swaps were terminated without penalty, the Authority entered into a new interest rate swap with RBC as swap counterparty, and the Prepaid Gas Agreement, the Gas Supply Agreements, the Calculation Agent Agreement and certain other agreements initially entered into in connection with the Prepaid Gas Agreement were amended to conform with provisions of the 2014 Indenture; and

WHEREAS, the 2014 Bonds were issued under the 2014 Indenture and secured by a pledge of the Trust Estate, which includes amounts received by the Authority from the Gas Purchasers pursuant to the Gas Supply Agreements, and certain other Revenues as are described in the 2014 Indenture; and

WHEREAS, the Series 2014 Bonds were issued as Sub-Series 2014A in an original aggregate principal amount of $175,000,000 with an annual interest rate of 5.000%, and Variable Rate Sub-Series 2014B in an original aggregate principal amount of $551,995,000, which variable rates
are established by reference to the index as specified in the 2014
Indenture (the “Index Rate”); and

WHEREAS, the Sub-Series 2014A Bonds and Sub-Series 2014B Bonds are
subject to mandatory tender but not optional tender in accordance with
the 2014 Indenture on July 31, 2019; and

WHEREAS, in order to permit the refunding or remarketing of the
Bonds for subsequent periods following mandatory tender of the Series
2014 Bonds, the Authority, the Gas Supplier and the Trustee entered into
a repricing agreement (the “Repricing Agreement”); and

WHEREAS, in order to continue to receive deliveries of natural gas
at a discount under the Gas Supply Agreements, the Authority has adopted
Ordinance No. 2019-01 authorizing the issuance of refunding bonds in an
original aggregate principal amount not to exceed $640,000,000 (the
“Series 2019A Refunding Bonds”) for the purpose of refunding and
redeeming the 2014 Bonds (the “2019 Refunding Transaction”) pursuant to
and in compliance with the terms of a supplement to the 2014 Indenture
(the “2019 Supplemental Indenture, and, together with the 2014 Indenture,
the “Indenture” and the Repricing Agreement; and

WHEREAS, for the purpose of improving the discount available to
NMMEAA and the Gas Purchasers, and to assure its availability for the
duration of the term of the Prepaid Agreement between 2032 and 2039, the
Authority has determined it is advisable to issue a series of fixed rate
Gas Supply Revenue Bonds, Series 2019B, in an aggregate principal amount
not to exceed $170,000,000 (the “Series 2019B Bonds” and, together with
the Series 2019A Refunding Bonds, the “Series 2019 Bonds”) for the
purpose of financing the prepayment of additional volumes of natural gas
to be delivered to each Gas Purchaser at a discount, as provided in this
Ordinance (the “2019 Additional Funding Transaction”); and

WHEREAS, the governing body of each of the Gas Purchasers has
delegated or is expected to delegate authority to its respective utility
director or other authorized officer to take such action as necessary or
advisable to effect the 2019 Additional Funding Transaction; and

WHEREAS, the Authority expects to receive an offer to purchase the
Series 2019B Bonds from RBC Capital Markets, LLC, as the underwriter (the
“Underwriter”) pursuant to a bond purchase agreement, which is
anticipated to include the Series 2019A Refunding Bonds (the “Bond
Purchase Agreement”); and

WHEREAS, the Authority desires to authorize the distribution
and use by the Underwriter of a Preliminary Official Statement and an
Official Statement in connection with the offering of the Series 2019
Bonds; and

WHEREAS, in connection with the sale and issuance of the Series
2019 Bonds, the Authority will enter into an agreement for the benefit of
the Underwriter (the “Continuing Disclosure Agreement”) providing for the
disclosure of certain annual financial information with respect to the
Bonds for the purpose of enabling the Underwriter to comply with Rule
15c2-12(b)(5) promulgated by the Securities and Exchange Commission under
the Securities Exchange Act of 1934; and
WHEREAS, in connection with the execution and delivery of the original Prepaid Gas Agreement, the Gas Supply Agreements and the issuance of the Series 2009 Bonds, and to manage the risk of fluctuations in the price of the Gas Supply to be delivered pursuant to the Prepaid Gas Agreement and Gas Supply Agreements, the Authority entered into two commodity swaps with BP Corporation North America ("BP"), which were subsequently amended, novated and assigned by BP to JPMorgan Chase Bank by a Novation and Assignment Agreement made effective as of July 1, 2010 (as amended, novated and assigned, the "Commodity Swap"), which Commodity Swap shall remain effective in connection with the 2019 Refunding Transaction and the 2019 Additional Funding Transaction; and

WHEREAS, under the Commodity Swap, payments made by each of the Gas Purchasers to the Authority pursuant to each respective Gas Supply Agreement are supported by a Receivables Purchase Agreement dated as of October 1, 2009 by and among the Authority, the Trustee and JPMorgan Chase Bank, National Association (the “Commodity Credit Instrument”) for the benefit of the Commodity Swap Counterparty; and

WHEREAS, in connection with the issuance of the Series 2019 Bonds, the Authority, the Trustee and Royal Bank of Canada, in its capacity as funding provider (the "Funding Provider"), expect to enter into a Funding and Assignment Agreement (the "2019 Funding and Assignment Agreement"), pursuant to which the Funding Provider may advance funds to cure a deficiency in the amount on deposit in any of the funds and accounts created under the Indenture; and

WHEREAS, a portion of the proceeds of the Series 2019 Bonds will be used to deposit funds in the Debt Service Reserve Fund pursuant to the Indenture, and under the terms of the Indenture the Trustee is required to draw upon the Debt Service Reserve Fund if amounts on deposit in the Revenue Fund are insufficient to make certain required transfers of funds pursuant to the Indenture; and

WHEREAS, under circumstances set forth in the Amended Prepaid Gas Agreement, the Gas Supplier shall be obligated to make a payment to the Trustee, as assignee of the Authority under the Indenture, in an amount sufficient to restore the required balance in the Debt Service Reserve Fund not later than the Business Day prior to the last day of the Term (as defined in the Amended Prepaid Gas Agreement) of the Amended Prepaid Gas Agreement; and

WHEREAS, pursuant to the Commodity Credit Instrument, the 2019 Funding and Assignment Agreement, the Amended Prepaid Gas Agreement and any Debt Service Credit Instrument, the Authority will subrogate its rights and assign any claims against the Gas Purchasers under the Amended Gas Supply Agreements to the Commodity Credit Provider, the Funding Provider and the Gas Supplier, in each case to the extent of their respective rights therein and subject to an Intercreditor Agreement (the "2019 Intercreditor Agreement"), which provides for the allocation of amounts recovered from the Gas Purchasers and the respective rights and remedies of such parties with respect to such amounts; and

WHEREAS, forms of the 2019 Supplemental Indenture, the 2019 Interest Rate Swap, [[the 2019 Liquidity Facility]] and the 2019 Funding and Assignment Agreement, and the 2019 Intercreditor Agreement have been presented to the Authority in connection with this Ordinance; and
WHEREAS, the Authority desires to authorize or ratify the preparation of the Preliminary Official Statement, the Bond Purchase Agreement, the Continuing Disclosure Undertaking and such other documents and instruments as are necessary to carry out the 2019 Additional Funding Transaction; and

WHEREAS, pursuant to Section 6-14-10.2 NMSA 1978, the Authority intends to delegate authority to each of the Chair and Vice-Chair of Authority to approve the final terms of the Series 2019 Additional Funding Bonds, including the interest rates, maturity date or dates, prices, and the final form of the 2019 Supplemental Indenture, the 2019 Funding and Assignment Agreement, the Preliminary Official Statement, the Continuing Disclosure Agreement, the Bond Purchase Agreement, and the other documents and instruments contemplated therein, which shall be as confirmed on behalf of the Authority in a Pricing Certificate executed and delivered by the Chair or Vice Chair of the Authority prior to the issuance and delivery of the Series 2019B Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE NEW MEXICO MUNICIPAL ENERGY ACQUISITION AUTHORITY:

Section 1. Capitalized terms defined in the preambles of this Ordinance shall have the meanings assigned to such terms therein, and capitalized terms in this Section shall have the meanings assigned herein. In addition, certain capitalized terms used in this Ordinance which are not otherwise defined herein shall have the meanings assigned to such terms in the 2014 Indenture.

"Act" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Amended Prepaid Gas Agreement" means the Prepaid Gas Agreement, as amended.

"Authority" or "NMMEAA" means the New Mexico Municipal Energy Acquisition Authority, a New Mexico joint powers authority formed and duly existing pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7 NMSA 1978, as amended.

"Bond Purchase Agreement" means the contract providing for the sale of the Bonds by the Authority to the Underwriter and the purchase of the Bonds by the Underwriter.

"Bonds" or "Series 2019B Bonds" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Business Day" shall have the meaning assigned in Section 1.01 of the 2014 Indenture.

"Calculation Agent" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Code" shall have the meaning assigned to such term in the preambles of this Ordinance.
"Commodity Credit Instrument" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Commodity Swap" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Commodity Swap Counterparty" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Continuing Disclosure Agreement" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Costs of Issuance" shall have the meaning assigned in Section 1.01 of the 2014 Indenture.

"Debt Service Required Reserve" means, an amount equal to the highest amount of two consecutive months of the fixed payments of the Commodity Swap Counterparty shown in the Schedule attached to the Commodity Swap to be paid in any future year, subject to recalculation as described in the Indenture.

"Debt Service Reserve Fund" means the fund with such name established pursuant to the Indenture.

"Fitch" means Fitch Ratings, Inc.

"Funding Provider" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Gas Purchaser" or "Gas Purchasers" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Gas Supplier" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Gas Supply" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Gas Supply Agreements" means, collectively, the separate Gas Supply Agreements dated as of October 1, 2009, between the Authority and each of the initial Gas Purchasers, and any amendments thereto.

"Joint Powers Agreement" shall have the meaning assigned to such term in the preambles of this Ordinance.

["Liquidity Facility Provider" shall have the meaning assigned to such term in the preambles of this Ordinance.]

"Members" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Minimum Discount" means $0.37 discount (or such lower amount as each of the Gas Purchasers shall have authorized) specified in the Amended Prepaid Gas Agreement or otherwise as specified in the Pricing Certificate.
"Moody's" means Moody's Investors Service, Inc., its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Secretary.

"Net Effective Interest Rate" means that interest rate, compounded annually, necessary to discount the scheduled debt service payments of principal and interest on the Bonds to the date of the Bonds and to the price paid to Authority for the Bonds, excluding any interest accrued to the date of delivery of the Bonds and based on a year with the same number of days for which interest is computed on the Bonds.


"Official Statement" means the final disclosure document to be used in connection with the sale of the Series 2019 Bonds.

"Preliminary Official Statement" means the preliminary disclosure document to be used in connection with the sale of the Series 2019 Bonds, in a form to be approved by the Project Management Committee prior to its use by the Underwriter and ratified by the Authority in the Pricing Certificate.

"Prepaid Gas Agreement" means the Prepaid Natural Gas Purchase and Sale Agreement, dated as of October 1, 2009, between the Authority and the Gas Supplier, as amended from time to time.

"Pricing Certificate" means one or more certificates executed by the Chair or Vice Chair of the Authority, pursuant to and as authorized by Section 6-14-10.2 NMSA 1978, dated on or before the date of delivery of the Series 2019 Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations, and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds; and (x) modification of the Minimum Discount, if applicable, all subject to the parameters and conditions contained in this Bond Ordinance, and approving final forms of the Transaction Documents.

"Project Management Committee" means the 3 members of the NMMEAA Board or alternates, each representing one of the Gas Purchasers.

"Rating Agencies" means, collectively, Fitch and Moody's.

"Repricing Agreement" means the Repricing Agreement dated as of August 1, 2014 entered into by and among the Authority, ABC and the Trustee.

"Revenue Fund" means the fund with such name established and maintained in accordance with the Indenture.
"Revenues" has the meaning assigned in Section 1.01 of the 2014 Indenture.

"State" shall have the meaning assigned to such term in the preambles of this Ordinance.

"Transaction Documents" means, collectively, the 2019 Supplemental Indenture, the Preliminary Official Statement, the Official Statement, the Bond Purchase Agreement, the ContinuingDisclosure Agreement, [[the 2019 Liquidity Facility,]] the 2019 Funding and Assignment Agreement, and such related agreements, amendments to related agreements, instruments and certificates as are necessary or appropriate to carry out the 2019 Additional Funding Transaction.

"Trustee" means Wells Fargo Bank, N.A., and any successor trustee appointed pursuant to the Indenture.

"Trust Estate" has the meaning assigned in Section 1.01 of the 2014 Indenture.

"Underwriter" shall have the meaning assigned to such term in the preambles of this Ordinance.

"2019 Funding and Assignment Agreement" means the Funding and Assignment Agreement by and among Royal Bank of Canada, the Authority and the Trustee, as amended to the extent necessary to conform with the Indenture.

[["2019 Liquidity Facility" means the Settlement Agreement, to be dated the date of issuance of the Bonds, among Royal Bank of Canada, as Liquidity Facility Provider, the Authority and the Trustee, providing for the purchase by the Liquidity Facility Provider of Bonds tendered for purchase in accordance with the terms of the Indenture, as amended from time to time.]]

"2019 Supplemental Indenture" means the supplemental indenture of trust to be entered into in connection with the issuance and delivery of the Series 2019 Bonds by and between the Authority and Wells Fargo Bank, National Association, dated as of August 1, 2019.

Section 2. The following details and determinations are respectively established and made for the Bonds:

A. The issuance of the Series 2019B Bonds is necessary and an appropriate method of preserving, extending and improving the Minimum Discount under the Amended Prepaid Gas Agreement for the benefit of the customers of the municipal utilities owned by the Gas Purchasers.

B. Moneys available for the 2019 Additional Funding Transaction from all sources other than proceeds of the Series 2019B Bonds are not sufficient to defray the cost of the 2019 Additional Funding Transaction.

C. The Series 2019B Bonds are to be issued and secured as provided in the Indenture, pursuant to the Joint Powers Agreement, the Act and the home-rule powers common to, and conferred upon the Authority
by the Members, and the Trust Estate may be lawfully pledged to secure the payment and redemption of the Series 2019B Bonds.

D. The Series 2019B Bonds shall be dated the date of their issuance and delivery to the Underwriter.

E. The Bonds shall be sold to the Underwriter at a negotiated sale for the sale price set forth in the Bond Purchase Agreement, which shall be as provided in the Pricing Certificate, and which shall provide for an underwriting discount of less than 0.75% of the principal amount of the Bonds.

F. The Net Effective Interest Rate on the Bonds shall not exceed 12% per annum, as provided by Section 6-18-7(D) NMSA 1978.

Section 3. The actions heretofore taken by the Authority and by the officers, employees, agents, attorneys and advisors of the Authority directed toward the issuance and sale of the Series 2019B Bonds, including, without limitation, submittal of a request for rating of the Bonds by the Rating Agencies are hereby acknowledged, ratified and approved.

Section 4. For the purposes authorized under the Act, the Joint Powers Agreement and the Indenture, including the refunding of the Series 2014 Bonds, the Authority hereby authorizes the issuance and sale of the Series 2019B Bonds; provided, that the Minimum Discount shall be available under the Amended Prepaid Gas Agreement, unless otherwise provided in the Pricing Certificate.

Section 5. The 2019 Supplemental Indenture, in substantially the form presented at this meeting, is hereby in all respects authorized, approved and confirmed. The Chair or Vice Chair of the Authority are hereby authorized to execute and deliver the 2019 Supplemental Indenture, which shall be attested by the Secretary, in substantially the form presented at this meeting for and on behalf of the Authority, with such alterations, changes or additions as may be authorized herein or as may be approved in the Pricing Certificate. As provided in the 2019 Supplemental Indenture, proceeds of the Series 2019B Bonds shall be applied to the 2019 Additional Funding Transaction, pay the Costs of Issuance, fund the Debt Service Reserve Fund as provided in the 2019 Supplemental Indenture, and for the other purposes described in the 2019 Supplemental Indenture.

Section 6. The 2019 Funding and Assignment Agreement [[and the Liquidity Facility]] [[is]] [[are]] hereby in all respects authorized, approved and confirmed and the Chair or Vice Chair of the Authority are hereby authorized to execute and deliver those said agreements, which shall be attested by the Secretary, in substantially the forms presented at this meeting for and on behalf of the Authority, with such alterations, changes or additions as may be authorized herein or as may be approved in the Pricing Certificate.

Section 7. The Authority hereby authorizes the preparation and use of the Preliminary Official Statement by the Underwriter following its review and approval by the Project Management Committee. The Chair or Vice Chair and the Secretary of the Authority
are hereby authorized to execute, attest and deliver the Official Statement, after appropriate review by the members of the Board.

Section 8. The Authority hereby authorizes and requests the preparation of the Bond Purchase Agreement, the Continuing Disclosure Agreement and other Transaction Documents necessary to carry out the 2019 Additional Funding Transaction, which shall be approved in the Pricing Certificate.

Section 9. The appropriate officers of the Authority, including without limitation the Chair, the Vice Chair and the Secretary are authorized to make any changes, alterations or additions in and to the Transaction Documents which may be necessary to correct errors or omissions therein, to remove ambiguities therefrom, to conform the same to the provisions of one another or to the provisions of the Pricing Certificate, or any other resolution adopted by the Authority, or to the provisions of the laws of the State or the United States. In addition, the above officers are authorized to execute all such agreements, documents and certificates (including but not limited to the Pricing Certificate, a certificate dealing with certain tax matters, investment agreements for proceeds of the Series 2019 Bonds, and a certificate establishing and directing the payment of Costs of Issuance) and to take all action necessary or reasonably required to carry out, give effect to and consummate the transactions as contemplated by this Ordinance and the Transaction Documents, and are authorized to take all action necessary in conformity with the Act, the Joint Powers Agreement and the Code with respect to the issuance, sale and delivery of the Bonds and with respect to the execution, delivery and performance of the Transaction Documents.

Section 10. In the event that any Gas Purchaser determines not to participate in the 2019 Additional Funding Transaction, this Ordinance and the Transaction Documents shall be supplemented or amended by resolution of the Authority so as to reflect the participation of the participating Gas Purchasers.

Section 11. If any provision of this Ordinance should be held invalid, the invalidity of such provision shall not affect the validity of any of the other provisions of this Ordinance.

Section 12. No member or employee of the Authority has any interest, direct or indirect, in the transactions contemplated by the Authority in this Ordinance or the Transaction Documents.

Section 13. All ordinances or resolutions of the Authority or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency.

Section 14. This Ordinance shall become effective five (5) days following publication of a notice of adoption of the Ordinance.

Section 15. A notice of the adoption of this Ordinance shall be published one time in the Albuquerque Journal. The notice shall be substantially as follows:
Notice is hereby given of the title and of a general summary of the subject matter contained in an Ordinance, duly adopted and approved by the New Mexico Municipal Energy Acquisition Authority ("NMMEA") on April 29, 2019. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of Modrall, Sperling, Roehl, Harris & Sisk, P.A., bond counsel to the Authority, at 500 Fourth Street N.W., Suite 1000, Albuquerque, New Mexico, and from the Secretary of the Authority.

The Title of the Ordinance is:

ORDINANCE NO. 2019-02


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 of Ordinance for Publication)
PASSED, ADOPTED AND APPROVED by the New Mexico Municipal Energy Acquisition Authority this ___ day of __________________, 2019.

Robert Westervelt, Chair

ATTEST:

Secretary
ORDINANCE NO. 2019-XXX

AMENDING AND RESTATING ORDINANCE NO. 2019-1315; AUTHORIZING THE
ISSUANCE, SALE AND DELIVERY OF THE CITY OF FARMINGTON, NEW MEXICO
MUNICIPAL GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2019
IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $13,500,000 FOR THE
PURPOSE OF DEFRAYING THE COSTS OF DESIGNING, ENGINEERING,
CONSTRUCTING, ACQUIRING AND IMPROVING STREETS AND TRAFFIC
IMPROVEMENTS, AND PAYING COSTS OF ISSUANCE OF THE SERIES 2019
BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE FROM MUNICIPAL
GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY PURSUANT TO
SECTION 7-1-6.12 NMSA 1978, PROVIDING THAT THE MATURITY DATES,
PRINCIPAL AMOUNTS, INTEREST RATES, REDEMPTION PROVISIONS AND OTHER
DETAILS OF THE BONDS WILL BE ESTABLISHED IN A BOND PURCHASE
AGREEMENT AND PRICING CERTIFICATE, AND DELEGATING AUTHORITY TO THE
CITY MANAGER AND CITY ADMINISTRATIVE SERVICES DIRECTOR TO APPROVE
THE FINAL TERMS OF THE BONDS AND TO EXECUTE AND DELIVER THE BOND
PURCHASE AGREEMENT; PROVIDING FOR THE EXECUTION OF THE BONDS AND
OTHER DOCUMENTS AND AGREEMENTS RELATING TO THE BONDS BY AUTHORIZED
OFFICERS OF THE CITY; RATIFYING ACTION PREVIOUSLY TAKEN IN
CONNECTION THERewith; AND REPEALING ALL ORDINANCES IN CONFLICT
HEREWITH.

The City Council is informed that:

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

WHEREAS, the City is a legally and regularly created, established,
organized and existing municipal corporation under the general laws of
the State of New Mexico; and

WHEREAS, pursuant to Section 7-190-9 NMSA 1978, as amended, and
Ordinance No. 2018-1312 adopted by the City Council on August 21, 2018
("Ordinance No. 2018-1312"), the City enacted a municipal gross receipts
tax in an amount equal to one-half of one percent (0.5%) of the gross
receipts reported or required to be reported by persons engaging in
business in the City for the month in which the tax is distributed to the
City (the "Municipal Gross Receipts Tax"); and

WHEREAS, Ordinance No. 2018-1312 provides that one-quarter of
the revenue derived from the Municipal Gross Receipts Tax shall be dedicated
for Public Works Purposes (the "Public Works Dedication"); and

WHEREAS, pursuant to Section 7-1-6.12 NMSA 1978, the City receives
monthly distributions of Municipal Gross Receipts Tax Revenues from the
New Mexico Department of Taxation and Revenue equal to one half of one
percent (0.5%) of the gross receipts of persons engaging in business
within the City, as determined and adjusted under the Gross Receipts and
Compensating Tax Act, Chapter 7, Article 9 NMSA 1978; and

WHEREAS, the City Council intends to pledge the Public Works
Dedication portion of the Municipal Gross Receipts Tax, i.e. the 0.125%
increment of Municipal Gross Receipts Tax (the "Pledged Revenues") as
security for repayment of the Bonds; and

WHEREAS, the Pledged Revenues are not pledged to the payment of any
bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council hereby determines that issuance of the
Bonds for the purpose of paying costs of designing, engineering,
constructing, acquiring and improving streets and traffic improvements
and paying the Expenses allocable to the financing of those improvements
(the "Project") is necessary and in the interest of the City and its
residents; and

WHEREAS, the City Council has determined and hereby determines that
it is in the best interests of the City and its residents that the Bonds
be issued with a first lien, but not an exclusive first lien, on the
Pledged Revenues on parity with the lien thereon of outstanding Parity
Bonds; and
WHEREAS, Section 3-31-6(C) NMSA 1978 provides:

"C. Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor;" and

WHEREAS, the proposed form of this Bond Ordinance has been filed with the City Clerk and presented to the City Council; and

WHEREAS, the City Council anticipates that the Bonds will be sold to the New Mexico Finance Authority (the "Purchaser") pursuant to the Bond Purchase Agreement which, together with the exact principal amounts, interest rates, redemption features and other final terms of the Bonds, shall be as set forth in the Bond Purchase Agreement and Pricing Certificate, both of which shall be deemed to supplement this Bond Ordinance; and

WHEREAS, the City Council intends to delegate authority to the Mayor, the City Manager or the City Treasurer/Administrative Services Director to approve the final terms of the Bonds and to execute the Pricing Certificate, and to execute and deliver the Bond Purchase Agreement to the Purchaser, pursuant to and as authorized by as permitted by Section 6-14-10.2 NMSA 1978, on or before the date of delivery of the Bonds, setting forth the final terms of the Bonds; and

WHEREAS, forms of the Bond Purchase Agreement and contingent Intercept Agreement have been presented to the City Council in connection with this Bond Ordinance; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

NOW, THEREFORE, be it ordained by the governing body of the City of Farmington:

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

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

"Authorized Officer" means the following officers of the City: Mayor, City Manager, City Treasurer/Administrative Services Director, or other officer of the City when designated by a certificate signed by the Mayor of the City from time to time, a certified copy of which shall be delivered to the Paying Agent and the Registrar.

"Bond Fund" has the meaning assigned to that term in Section 16 of this Bond Ordinance.

"Bond Ordinance" means this City Ordinance No. ________.

"Bond Purchase Agreement" means the bond purchase agreement between the City and the Purchaser.

"Bondholder," "holder," "owner" or "Owner" means the registered owner of any Bond as shown on the registration books of the City for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Bondholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.
“Bonds” means the “City of Farmington, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019” authorized by this Bond Ordinance.

“Business Day” means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

“City” means the City of Farmington, in the County of San Juan and State of New Mexico.

“City Council” means the City Council of the City or any future successor governing body of the City.

“Closing Date” means the date on which the Bonds are issued and delivered to the Purchaser.

“Closing Memorandum” means the memorandum prepared on behalf of the City by its municipal advisor which shall specify the deposit and application of proceeds of the Bonds on the Closing Date.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Continuing Disclosure Undertaking” means the continuing disclosure undertaking with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser, if required.

“Costs of Issuance” or “Expenses” means all costs relating to issuance of the Bonds, including, without limitation, costs of advertising and publication, costs of preparing the Bonds, fees and expenses of the financial advisor, bond counsel, the Paying Agent, the Registrar, rating fees and other reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the issuance of the Bonds.

“Event of Default” means any of the events stated in Section 28 of this Bond Ordinance.

“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 City as its fiscal year.

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

“Hold Harmless NGRT Distribution” means the distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to one eighth of one percent (0.125%) increment of municipal gross receipts tax imposed on all persons engaging in business in the City by City Ordinance No. 2018-1312, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978; provided that the percentage of such distribution decreases annually as provided in Section 7-1-6.46 NMSA 1978 each year beginning on July 1, 2015 until the distribution is eliminated after July 1, 2029.

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

"Insured Bank" means any federally or state-chartered savings and loan association or federally or state-chartered commercial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation and which has, or is the lead bank of a parent holding company which has (i) unsecured, uninsured and unguaranteed obligations which are rated AA or better by Fitch and S&P or (ii) combined capital, surplus and undivided profits of not less than $10,000,000.

"Intercept Agreement" means the agreement between the City and the Purchaser (which becomes effective only upon the City's failure to timely make payments of principal and interest on the Bonds), which provides for the direct payment by New Mexico Department of Taxation and Revenue to the Purchaser of the Pledged Revenues in amounts sufficient to pay principal and interest on the Bonds, and any amendments or supplements to the Intercept Agreement.

"Interest Payment Date" means each June 1 and December 1, commencing December 1, 2019.

"Municipal Gross Receipts Tax" means the excise tax imposed by the City pursuant to Section 7-190-9 NMSA 1978, as amended, and Ordinance No. 2018-1312 adopted by the City Council on August 21, 2018, in an amount equal to one-half of one percent (0.5%) of the gross receipts reported or required to be reported by persons engaging in business in the City for the month in which the tax is distributed to the City.

"Municipal Gross Receipts Tax Income Fund" means the Pledged Revenue Fund established in Section 16 of this Bond Ordinance and maintained by the City.


"Outstanding" or "outstanding" when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under this Bond Ordinance except:

A. those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B. those otherwise deemed to be paid in accordance with Section 34 of this Bond Ordinance;

C. those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

"Parity Gross Receipts Tax Bonds" means the Bonds and any other bonds or obligations which may in the future be issued by the City with a lien on Pledged Revenues on parity with the lien thereon of the Bonds.

"Paying Agent" means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

"Permitted Investments" means, but only to the extent permitted by applicable laws of the State, ordinances of the City or the Investment Policy of the City, as amended from time to time, including the following:

A. Certificates of deposit issued by banks and savings and loan associations located within the geographical boundaries of the City, collateralized in accordance with this policy and with a maximum stated maturity of five (5) years.

B. Obligations of the United States Government, its agencies, or instrumentalities excluding mortgage backed securities.
which are either direct obligations of the United States or are backed by
the full faith and credit of the United States Government with a maximum
stated maturity of five (5) years.

C. Repurchase agreements collateralized by
obligations of the U.S. Government, its agencies, or instrumentalities.

D. The New Mexico State Treasurer's Local Government
Investment Pool established pursuant to Sec. 6-10-10.1 NMSA 1978, and
operated by the New Mexico State Treasurer.

E. Interest bearing demand accounts in approved
depositories.

"Pledged Revenues" means the revenues derived from the (i)
one eighth of one percent (.125%) portion of the one-half of one percent
(0.5%) municipal gross receipts tax imposed on all persons engaging in
business in the City by City Ordinance No. 2018-1332, adopted on August
21, 2018, with an effective date of January 1, 2019, which portion
equals, subject to the exemptions specified in Section 7-190-9 NMSA 1978,
one eighth of one percent (.125%) of the gross receipts of all persons
engaging in business in the City for the month in which the tax is
distributed to the City and (ii) the Hold Harmless Distribution
associated with such portion; provided that the City intends that Section
33-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged
pursuant to the Bond Ordinance (the City is not pledging and the term
"Pledged Revenues" does not include the state-shared gross receipts tax
or any other local option gross receipts tax income received by the City).

"Pricing Certificate" means one or more certificates executed
by the Mayor, or in the Mayor’s absence, the City Manager or City
Administrator, dated on or before the date of delivery of the Bonds,
setting forth the following final terms of the Bonds: (i) the interest
and principal payment dates; (ii) the principal amounts, denominations
and maturity amortization; (iii) the sale prices; (iv) the interest rate
or rates; (v) the interest payment periods; (vi) the redemption
and tender provisions; (vii) the creation of any capitalized interest fund,
including the size and funding of such fund(s); (viii) the amount
of underwriting discount, if any; (ix) the amount of the Reserve
Requirement, if any, and whether such Reserve Account shall be funded
with proceeds of the Bonds or through the deposit of a Reserve Account
Insurance Policy; (x) whether an Insurance Policy shall be acquired and
the terms of the Insurance Policy, if any, and (xi) the final terms of
agreements, if any, with agents or service providers required for the
purchase, sale, issuance and delivery of the Bonds, all subject to the
parameters and conditions contained in this Ordinance.

"Project" means designing, engineering, constructing,
acquiring and improving streets and traffic improvements and paying the
Expenses of the issuance of the Bonds.

"Purchaser" means the New Mexico Finance Authority or such
other purchaser as may be designated in the Bond Purchase Agreement.

"Registrar" means the City Treasurer, as agent for the City
for transfer and exchange of the Bonds or any other entity at the time
appointed by resolution of the City Council.

"Related Documents" means the Bond Purchase Agreement, the
Pricing Certificate, the Intercept Agreement, Tax Compliance Certificate,
and any other document or agreement containing an obligation of the City
as may be required in connection with the issuance of the Bonds and the
application of the proceeds thereof to the Project.

"Reserve Requirement" means the reserve requirement for the
Bonds, if any, the amount and method of funding of which shall be
specified in the Pricing Certificate.

"State" means the State of New Mexico.

Section 2. Ratification. All action hereof taken (not
inconsistent with the provisions of this Bond Ordinance) by the City
Council and the officers of the City, directed toward the Improvement
Project, the issuance of the Bonds for the Improvement Project and the
sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project. The Project and the method of financing the Improvement Project are hereby authorized and ordered at a total cost not to exceed $13,500,000 to be paid from proceeds of the Bonds.

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

A. The Project is necessary and in the best interest of the City and its residents.

B. Moneys available for the Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the Project.

D. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

E. It is economically feasible to defray, in part, the cost of the Project by the issuance of the Bonds.

F. The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the Project, is necessary and in the interest of the public health, safety and welfare of the residents of the City.

Section 5. Bonds – Authorization and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, revenue bonds to be designated the “City of Farmington, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019” in an aggregate principal amount not to exceed $13,500,000 (excluding any premium paid for the Bonds by the Purchaser) and the issuance, sale and delivery of the Bonds is hereby authorized. The Bonds shall be payable and collectible, both as to principal and interest, solely from the Pledged Revenues. The Bonds shall be sold by a private sale to the Purchaser pursuant to the Bond Purchase Agreement at the price established in the Bond Purchase Agreement.

B. Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Farmington, New Mexico Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019."

(1) The Bonds shall be issued subject to the following parameters:

(aa) The Bonds shall be issued in an aggregate principal amount not to exceed $13,500,000 (excluding any premium paid for the Bonds by the Purchaser) for the Project.

(bb) The net effective interest rate on the Bonds shall not exceed 12% per annum.

(cc) The final maturity of the Bonds shall not be later than June 1, 2039, or such other earlier date as is specified in the Bond Purchase Agreement and Pricing Certificate.

(2) The forms, terms, and provisions of the Bonds in the form set forth in Section 13 are hereby approved with only such changes therein as are not inconsistent with this Bond Ordinance and as shall be set forth in the Bond Purchase Agreement and Pricing Certificate.

(3) The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and
denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on December 1, 2019 until their respective maturities. The Bonds shall bear the rates of interest, maturities and any provisions for redemption prior to maturity as shall be established in the Bond Purchase Agreement and Pricing Certificate.

Section 6. Prior Redemption,

A. Optional Redemption. Provisions for optional redemption of the Bonds shall be as established in the Bond Purchase Agreement and Pricing Certificate.

B. Notice. Notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to send notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall not on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date.

C. Conditional Redemption. If money or Defeasance Obligations (as defined in Section 34) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to subsection B of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by subsection B of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7. Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro-Tem and City Clerk shall each file with the New Mexico Secretary of State his or her manual signature certified by him or her
Section 8. Executive and Authentication of Bonds.

A. Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, or the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro-Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B. Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11. Registration, Transfer, Exchange and Ownership of Bonds.
A. Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Lost Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E. Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having a shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than $50,000,000. It shall not be required that the same institution serves as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Book-Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be
delivered to the Depository and immobilized in its custody. The book-
entry system will evidence ownership of the Bonds in authorized
denominations, with transfer of ownership effected on the books of the
Depository and its participants ("Participants"). As a condition to
delivery of the Bonds in book-entry form, the Underwriters will,
immediately after acceptance of delivery thereof, deposit, or cause to be
deposited, the Bond certificates with the Depository, registered in the
name of the Depository or its nominee. Principal, premium, if any, and
interest will be paid to the Depository or its nominee as the registered
owner of the Bonds. The transfer of principal, premium, if any, and
interest payments to Participants will be the responsibility of the
Depository; the transfer of principal, premium, if any, and interest
payments to the beneficial owners of the Bonds (the "Beneficial Owners")
will be the responsibility of Participants and other nominees of
Beneficial Owners maintaining a relationship with Participants (the
"Indirect Participants"). The City will not be responsible or liable for
maintaining, supervising or reviewing the records maintained by the
Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the
Depository, (ii) the Depository determines to discontinue providing its
services with respect to the Bonds or (iii) the City determines that a
continuation of the system of book-entry transfers through the Depository
ceases to be beneficial to the City or the Beneficial Owners, the City
will either identify another Depository or certificates for the Bonds
will be delivered to the Beneficial Owners or their nominees, and the
Beneficial Owners or their nominees, upon authentication of Bonds and
registration of those Bonds in the Beneficial Owners’ or nominees’ names,
will become the owners of the Bonds for all purposes. In that event, the
City shall mail an appropriate notice to the Depository for notification
to Participants, Indirect Participants and Beneficial Owners of the
substitute Depository or the issuance of bond certificates to Beneficial
Owners or their nominees, as applicable.

Officers of the City are authorized to sign agreements with
the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Bond Ordinance,
so long as all of the Bonds are registered in the name of the Depository
or its nominee, all payments of principal, premium, if any, and interest
on the Bonds, and all notices with respect to the Bonds, shall be made
and given by the Paying Agent, Registrar or the City to the Depository as
provided in this Bond Ordinance and by the Depository to its Participants
or Indirect Participants and notices to the Beneficial Owners of the
Bonds in the manner provided in an agreement or letter of the City to the
Depository.

Section 12. Special Limited Obligations. All of the Bonds and all
payments of principal, premium, if any, and interest thereon whether at
maturity or on a redemption date, together with any interest accruing
thereon, shall be special limited obligations of the City and shall be
payable and collectible solely from the Pledged Revenues, which revenues
are so pledged and are payable as set forth in Section 19 of this Bond
Ordinance. The owner or owners of the Bonds may not look to any general
or other fund for the payment of the principal of or interest on such
obligations, except the designated special funds pledged therefor. The
Bonds shall not constitute an indebtedness or a debt of the City within
the meaning of any constitutional, charter or statutory provision or
limitation, nor shall they be considered or held to be general
obligations of the City, and each of the Bonds shall recite that it is
payable and collectible solely out of the Pledged Revenues, pledged as
set forth in this Bond Ordinance, and that the holders thereof may not
look to any general or other municipal fund for the payment of the
principal of and interest on the Bonds. Nothing herein shall prevent the
City from applying other funds of the City legally available therefor to
the payment of the Bonds, in its sole discretion.

Section 13. Form of Bonds. The forms, terms and provisions of the
Bonds shall be substantially in the form set forth below, with such
changes therein as are not inconsistent with this Bond Ordinance.
UNITED STATES OF AMERICA

STATE OF NEW MEXICO

CITY OF FARMINGTON, NEW MEXICO
MUNICIPAL GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS
SERIES 2019

Bond No. $  

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<th>INTEREST RATE</th>
<th>MATURITY DATE</th>
<th>DATE OF BOND</th>
<th>CUSIP</th>
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<td>___% per annum</td>
<td>June 1, _____</td>
<td>___________</td>
<td>2019</td>
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REGISTERED OWNER: NEW MEXICO FINANCE AUTHORITY

PRINCIPAL AMOUNT: ___________ DOLLARS

The City of Farmington (the "City"), in the County of San Juan and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Farmington, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the United States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on December 1, 2019 and each June 1 and December 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Farmington, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $, issued in denominations of $5,000 or integral multiples thereof, designated as the City of Farmington Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019 (the "Bonds") issued under and pursuant to City Ordinance No. ________ (the "Bond Ordinance").

The Bonds maturing on and after June 1, 20___, are subject to prior redemption at the City's option in one or more units of principal of $5,000 on and after June 1, 20___ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date.
Redemption shall be made upon prior notice mailed to each registered owner of each bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Bond Ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the
Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Bonds on the Pledged Revenues is an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on a parity with, or subordinate and junior to, the lien on the Pledged Revenues of the Bonds, but additional bonds may not be issued with a lien thereon superior to the lien thereon of the Bonds. Amounts and securities held in the Bond Fund, as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Bonds.

The Bonds are issued to provide funds for designing, engineering, constructing, acquiring and improving streets and traffic improvements and paying the Expenses of the issuance of the Bonds.

The City covenants and agrees with the owner of this Bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

This bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication.

IN WITNESS WHEREOF, the City of Farmington, New Mexico has caused this bond to be signed and executed on the City’s behalf with the facsimile or manual signature of the Mayor or Mayor Pro-Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF FARMINGTON, NEW MEXICO

By

Mayor or Mayor Pro-Tem

By

City Clerk

(SEAL)
(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

This is one of the Bonds described in the Bond Ordinance, and this bond has been registered on the registration books kept by the undersigned as Registrar for the Bonds.

Date of Authentication: City Treasurer of the City of Farmington, New Mexico, as Registrar

By: ______________________

Authorized Officer

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, ______________________ hereby sells, assigns and transfer unto ______________________ the within bond and hereby irrevocably constitutes and appoints ______________________ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

Social Security or Tax Identification No. of Assignee ______________________

Dated: ______________________

Signature Guarantee:

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)

(End of Form of Bond)
Section 14. Period of Usefulness of the Project. It is hereby determined and recited that the period of usefulness of the assets financed with proceeds of the Bonds is not less than twenty (20) years.

Section 15. Use of Bond Proceeds and Other Funds; Completion of Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the Project.

A. Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

B. Program Account Deposit. The amount specified in the Closing Memorandum shall be deposited to the City’s Program Account in the Program Fund maintained on behalf of the Purchaser by BOKF, NA and applied toward costs of the Project.

Section 16. Funds and Accounts. The City hereby creates and continues the following special and separate funds and accounts:

A. Municipal Gross Receipts Tax Income Fund. So long as any of the Bonds or Parity Obligations shall be outstanding, either as to principal or interest, or both, the Pledged Revenues shall be set aside and deposited monthly into a separate fund (which shall be a segregated account) known as the “City of Farmington Municipal Gross Receipts Tax Income Fund.”

B. Bond Fund. The City of Farmington Municipal Gross Receipts Tax Improvement Revenue Bonds, Series 2019 Bond Fund is hereby established and shall be maintained by the City for the purposes described in Section 19 hereof.

C. Program Account. The City hereby consents to the establishment of the Program Account maintained on behalf of the Purchaser by BOKF, NA and applied toward costs of the Project.

Section 17. Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or any other funds herein designated.

Section 18. Reserved.

Section 19. Administration of Income Fund. So long as any of the Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues:

A. Bond Fund Payments. As a first charge on the Pledged Revenues, the following amounts shall be withdrawn from the Income Fund and shall be concurrently credited to the Bond Fund for the purposes described in this Section 19:

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Bonds then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Bonds then outstanding.

B. Credit. In making the deposits required to be made into the Bond Fund, if there are any amounts then on deposit in the Bond Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to subsection A above shall be reduced by the amount available in such fund for such purpose.
C. Transfer of Money out of Bond Fund. Each payment of principal and interest becoming due on the Bonds shall be transferred from the Bond Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

D. Defraying Delinquencies in the Bond Fund. If, in any month, the City shall, for any reason, fail to pay into the Bond Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied.

E. Payment of Parity Obligations. Concurrently with the payment of the Pledged Revenues required by subsections A and D of this Section, any amounts on deposit in the Income Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Gross Receipts Tax Bonds payable from such Pledged Revenues, as the same become due. If funds on deposit in the respective Income Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the Bonds and any other outstanding Parity Bonds, then the available funds in the Income Fund will be used, first, on a pro-rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Bonds, for the payment of principal of and interest on all series of outstanding Parity Bonds and, second, to the extent of remaining available funds in the Income Funds on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Bonds, for the required debt service reserve fund deposits for all series of outstanding Parity Bonds.

F. Termination upon Deposits to Maturity. No payment shall be made into the Bond Fund if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Bonds to their respective maturities or applicable redemption dates, in which case moneys in the Bond Fund 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 the Bond Fund may be used as provided below.

G. Payment of Subordinate Lien Obligations. Subsequent to the payments required by subsections A, D and E of this Section, any balance remaining in the Income Fund, after making the payments hereinabove provided shall be used by the City for the payment of interest on and the principal of additional bonds or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Bonds hereafter authorized, issued and payable from the Pledged Revenues, as the same become due. Payments with respect to principal, interest and reserve funds for any such subordinate lien obligations may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional obligations.

H. Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 20. General Administration of Funds. The funds and accounts designated in this Bond Ordinance shall be administered as follows:

A. Investment of Money. Any moneys in any fund or account designated in Sections 16 through 19 hereof may be invested in any Permitted Investment then permitted by New Mexico law, except as is provided in Section 34 hereof with respect to defeasance. The obligations so purchased as an investment of moneys in any such fund or account shall be deemed at all times to be part of said fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to the fund or account, and any loss resulting from such investment shall be charged to the fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund or account.
B. Deposits of Funds and Accounts. The moneys and investments comprising each of the funds and accounts hereinabove designated in Sections 16 through 19 of this Bond Ordinance shall be maintained separately from all other funds and accounts in an Insured Bank or Insured Banks. The amounts prescribed shall be paid to the appropriate funds or accounts as specified in Sections 16 through 19. Each payment shall be made into the proper bank account and credited to the proper fund or account not later than the last day designated; provided that when the designated date is a Saturday, Sunday or a legal holiday, then such payment shall be made on the next preceding business day. Nothing herein shall prevent the establishment of one such bank account or more (or consolidation with any existing bank account), for all of the funds and accounts in Sections 16 through 19 of this Bond Ordinance.

Section 21. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in the Bond Fund, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Bonds constitute an irrevocable and first lien, but not an exclusive first lien on the Pledged Revenues on parity with the lien thereon of additional Parity Bonds, if any, hereafter authorized to be issued and payable from the Pledged Revenues.

Section 22. Reserved.

Section 23. Additional Bonds and Other Obligations.

A. Limitations upon Issuance of Other Parity Obligations. Nothing in this Bond Ordinance contained shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon said revenues on a parity with, but not prior nor superior to, the lien of the Bonds herein authorized, nor to prevent the issuance of bonds or other obligations refunding all or a part of the Bonds herein authorized, provided, however, that before any such additional Parity Obligations are authorized or actually issued (excluding refunding bonds), the following conditions shall be met:

1. The City is then current in all of the accumulations required to be made into the Bond Fund pursuant to Section 19 of this Bond Ordinance; and

2. The Pledged Revenues received by the City for the Fiscal Year immediately preceding the date of the issuance of such additional Parity Obligations shall have been sufficient to pay an amount representing at least 100% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on the then outstanding Bonds, all other then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding any accumulation for reserves therefor).

For purposes of the tests set forth in clauses (1) and (2) above, if on the date of issuance of any such Parity Obligations the full amount of a reserve fund requirement for the Parity Obligations is immediately funded or capitalized from the proceeds of such Parity Obligations, the amount of such reserve fund requirement so funded shall be deducted from the principal and interest coming due in the final Fiscal Year for the proposed additional Parity Obligations.

B. Certificate or Opinion of Earnings. A written certification or opinion by an Independent Accountant or the City's Administrative Services Director that said annual Pledged Revenues for such preceding Fiscal Year are sufficient to pay the amounts set forth in Subsection A(2) of this Section, as applicable, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver said additional bonds or other obligations on parity with the Bonds herein authorized.
C. Subordinate Obligations Permitted. Nothing in this Bond Ordinance contained shall be construed in such a manner as to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon said Pledged Revenues subordinate or junior in all respects to the lien of the Bonds herein authorized.

D. Superior Obligations Prohibited. Nothing herein contained shall be construed so as to permit the City to issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to the Bonds.

Section 24. Refunding Bonds. The provisions of Section 23 hereof are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time after the Bonds, or any part thereof, shall have been issued and remain outstanding, the City shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from Pledged Revenues, such bonds or other obligations, or any part thereof, may be refunded (but only with the consent of the registered owner or owners thereof, unless 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 City’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 subsection D of Section 23 and in subsections B and C of this Section).

B. Limitations Upon Issuance of Parity Refunding Obligations. No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on parity with the Bonds herein authorized, unless:

1. The lien on the Pledged Revenues of the outstanding obligations so refunded is on a parity with the lien thereon of the Bonds herein authorized; or

2. The refunding bonds or other refunding obligations are issued in compliance with Subsection A of Section 23 hereof.

C. Refunding Part of an Issue. The refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any there be; and the registered owner or owners of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the registered owner or owners of the bonds or other obligations of the same issue refunded thereby.

D. Limitations Upon Issuance of any Refunding Obligations. Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the City may by ordinance or resolution provide, subject to the inclusion of any such rights and privileges designated in Subsection C of this Section, but without any impairment of any contractual obligations imposed upon the City 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 the issue herein authorized). If only a part of 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 registered owner or owners of the unrefunded portion of such obligations, unless:

1. The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest requirements evidenced by such refunding obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations, or

2. The refunding bonds or other refunding obligations are issued in compliance with Subsection A of Section 23 hereof, or
(3) 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.

Section 25. Equality of Parity Bonds. The Parity Bonds from time to time outstanding 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 their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Bonds regardless of whether they are actually issued and delivered or incurred at different times.

Section 26. Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A. Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Bond Ordinance.

B. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

E. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

G. Other Liens. Other than as described and identified by this Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

H. Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 33 of this Bond Ordinance.

I. Bond Fund. The Bond Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

J. Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

K. Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.
L. Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officials are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds and amounts credited to the Rebate fund shall be fee and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 20 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 27. Reserved.

Section 28. Events of Default. Each of the following events is hereby declared an "event of default":

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D. Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subsections A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.
E. Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 29. Remedies upon Default. Upon the happening and continuance of any of the events of default as provided in Section 28 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder or its holder to proceed as provided herein shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 30. Duties upon Default. Upon the happening of any of the events of default provided in Section 28 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 19 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 31. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 32. Delegated Powers. The officers of the City are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing, the publication of the summary of this Ordinance set out in Section 39 (with such changes, additions and deletions as they may determine). The Mayor or, in the absence of the Mayor, the Mayor Pro-Tem, is authorized and directed to execute and the Clerk is authorized and directed to affix the seal of the City to and attest, when applicable, the Related Documents, in substantially the form as hereby approved or with such changes therein as are not inconsistent with this Ordinance and as shall be approved by the Mayor or, in the absence of the Mayor, the Mayor Pro-Tem, the execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions thereof from the form presented to the City Council. From
and after adoption of this Ordinance and the execution and delivery of the Related Documents, the officers, agents and employees of the City are hereby authorized, empowered, and directed to do all such acts and to execute all such documents as may be necessary to carry out and comply with the provisions of the Related Documents. Pursuant to Section 6-14-10.2, NMSA 1978, any of the Mayor, City Manager and City Treasurer/Administrative Services Director is each individually delegated authority to execute and deliver the Bond Purchase Agreement to the Purchaser, to execute the Pricing Certificate, and to determine any or all of the final terms and conditions of the Bonds, subject to the parameters and conditions contained in this Bond Ordinance. The Mayor, City Manager or City Treasurer/Administrative Services Director shall present the Bond Purchase Agreement to the City Council in a timely manner, before or after delivery of the Bonds, at a regularly scheduled public meeting of the City Council.

Section 33. Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City), but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

A. An extension of the maturity of any Bond; or
B. A reduction of the principal amount or interest rate of any Bond; or
C. The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or
D. A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or
E. The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or
F. The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 34. Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section 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.

Section 35. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 36. Severability Clause. If any Section, paragraph, clause or provision of this Bond 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 Bond Ordinance.

Section 37. 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. This Ordinance hereby supersedes and repeals Ordinance No. 2019-1315.

Section 38. Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro-Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 39 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 39. 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 Bond Ordinance shall be published in substantially the following form:

(End of Form of Summary for Publication)
DONE AND APPROVED this 7th day of May, 2019.

APPROVED:

Nate Duckett, Mayor

ATTEST:

Dianne Smylie, MMC, City Clerk
ORDINANCE NO. 2019-1316

AN ORDINANCE AMENDING CHAPTER 22, BY ADDING A NEW ARTICLE 8, ENTITLED "WIRELESS COMMUNICATION FACILITIES"; PROVIDING DEFINITIONS; PROVIDING FOR PERMITS; AND PROVIDING FOR SEVERABILITY

WHEREAS, the City of Farmington ("City") desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses and schools within the City; and

WHEREAS, the City acknowledges that small wireless facilities, including facilities commonly referred to as small cells, often may be deployed most effectively in the public rights-of-way; and

WHEREAS, the City intends to fully comply with State and federal law; and

WHEREAS, federal laws and regulations, wireless technology and consumer usage have reshaped the environment within which wireless communication facilities are permitted and regulated.

NOW, THEREFORE, BE IT ORDAINED by the City of Farmington, New Mexico that Chapter 22, shall be amended by adding Article 8, Wireless Communication Facilities as follows:

Sec. 22-8-1 Purpose.

(a) To establish policies and procedures for the placement of small wireless facilities in rights-of-way within the City, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole;

(b) To prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;

(c) To prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(d) To prevent interference with the facilities and operations of facilities lawfully located in rights-of-way;

(e) To preserve the character of the neighborhoods in which facilities are installed;

(f) To facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services;

(g) To ensure City zoning regulations are applied consistently with federal and State telecommunications laws, rules and regulations of the Federal Communications Commission and controlling court decisions; and

(h) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of personal wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the FCC.

Sec. 22-8-2 Definitions. As used in this Ordinance, the following terms shall have the meanings set forth below:
(a) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used to provide wireless services.

(b) "Antenna array" means a single or group of antenna elements, not including small wireless facilities, and associated mounting hardware, transmission lines, remote radio units, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.

(c) "Applicable codes" means uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization and enacted by the City, including the local amendments to those codes enacted by the City solely to address imminent threats of destruction of property or injury to persons, to the extent that those amendments are consistent with the Wireless Consumer Advanced Infrastructure Investment Act ("Act").

(d) "Applicant" means a wireless provider that submits an application.

(e) "Application" means a request submitted by an applicant to the City for a permit to collocate one or more small wireless facilities or to approve the installation, modification or replacement of a utility pole or wireless support structure.

(f) "City" means the City of Farmington.

(g) "City utility pole" means a utility pole, owned or operated by the City, in a right-of-way.

(h) "Collocate" or "collocation" means to install, mount, maintain, modify, operate or replace one or more wireless facilities on, in or adjacent to a building, wireless support structure or utility pole for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(i) "Design district" means an area zoned or otherwise designated by municipal ordinance and for which a municipality maintains and uniformly enforces unique design and aesthetic standards.

(j) "Distributed Antenna System" or "DAS" means a network consisting of equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

(k) "FAA" means the Federal Aviation Administration.

(l) "FCC" means the Federal Communications Commission.

(m) "Fee" means a one-time charge.

(n) "Historic district" means a group of buildings, properties or sites that fall within the category defined in 47 C.F.R. 1.1307(a)(4) and are: (a) listed in the national register of historic places or formally determined eligible for listing in that register by the keeper of the register in accordance with the nationwide programmatic agreement found in 47 C.F.R. Part 1, Appendix C; or (b) designated as a historic district in accordance with the Historic District and Landmark Act.

(o) "Law" means federal, state or local law.

(p) "Permit" means the written permission of the City for a wireless provider to install, mount, maintain, modify, operate or replace a utility pole or to collocate a small wireless facility on a utility pole or wireless support structure.

(q) "Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization and includes the City.
(r) "Rate" means a recurring charge.

(s) "Right-of-way" means the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement. Right-of-way does not include the area on, below or above a federal interstate highway, a state highway or route under the jurisdiction of the department of transportation, a private easement or a utility easement that does not authorize the deployment sought by a wireless provider.

(t) "Small wireless facility" or "small wireless facilities" mean(s) a wireless facility that:

1. is mounted on structures fifty (50) feet or less in height including their antennas; or

2. is mounted on structures no more than ten percent (10%) taller than other adjacent structures; or

3. does not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater;

4. has antennas that are, or could fit, inside an enclosure no more than three (3) cubic feet in volume; and

5. has other ground- or pole-mounted wireless equipment and any pre-existing associated equipment on the structure, not including the following, that are twenty-eight (28) or fewer cubic feet in volume:

   i. electric meter;

   ii. concealment elements;

   iii. telecommunications demarcation box;

   iv. grounding equipment;

   v. power transfer switch;

   vi. cutoff switch;

   vii. vertical cable runs for the connection of power and other services; and

   viii. design elements required by the City.

6. the facilities do not require antenna structure registration under federal law;

7. the facilities are not located on Tribal land as defined under federal law; and

8. the facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified under federal law.

(u) "Stealth design" means a design that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include, but are not limited to, facilities disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened roof-mounted antennas or flush-mounted antennas that are either painted to match or enclosed in an architecturally-applicable box.

(v) "Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public
safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(w) "Utility pole" means a pole or similar structure used in whole or in part for communications services, electricity distribution, lighting or traffic signals. Utility pole does not include a wireless support structure or electric transmission structure.

(x) "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications; radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration; and includes a small wireless facility. Wireless facility does not include:

1. the structure or improvements on, under or within which the equipment is collocated;
2. a wireline backhaul facility, coaxial cable or fiber-optic cable between wireless support structures or utility poles; or
3. coaxial or fiber-optic cable otherwise not immediately adjacent to, or directly associated with, an antenna.

(y) "Wireless infrastructure provider" means a person, other than a wireless services provider, that may provide telecommunications service in New Mexico and that builds or installs wireless communications transmission equipment, wireless facilities' utility poles or wireless support structures.

(z) "Wireless provider" means a wireless infrastructure provider or wireless services provider.

(aa) "Wireless services" means services provided to the public that use licensed or unlicensed spectrum, either mobile or at a fixed location, through wireless facilities.

(bb) "Wireless services provider" means a person that provides wireless services.

(cc) "Wireless support structure" means a freestanding structure, including a monopole or guyed or self-supporting tower, but not including a utility pole.

(dd) "Wireline backhaul facility" means a facility used to transport services by wire from a wireless facility to a network.

Sec. 22-8-3 Exempt Facilities. The following are exempt:

(a) FCC licensed amateur (ham) radio facilities;

(b) Satellite earth stations, dishes or antennas used for private television reception not exceeding one (1) meter in diameter; and

(c) A temporary, commercial wireless communication facility installed for providing coverage of a special event such as news coverage or sporting event, subject to approval by the City. The facility shall be exempt from the provisions of this Article for up to one week before and after the duration of the special event.

Sec. 22-8-4 Permitted Use: Application and Fees,

(a) Permitted Use. Collocation of a small wireless facility or a new or modified utility pole for the collocation of a small wireless facility shall be a permitted use subject to the other requirements of this Article.

-7.3-
(b) Permit Required. No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a permit therefore.

(c) Permit Application. All small wireless facility applications for permits filed pursuant to this Article shall be on a form, paper or electronic, provided by the City.

(d) Application Requirements. The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

(1) The applicant's name, address, telephone number, and email address;

(2) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;

(3) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;

(4) A small wireless facility shall comply with all applicable codes.

(e) Routine Maintenance and Replacement. The City may not require an application, approval or permit or impose a fee, rate or other charge for the routine maintenance of a small wireless facility, the installation, maintenance, operation, placement or replacement of a micro wireless facility that is, in accordance with applicable codes, suspended on cables strung between utility poles or wireless structures or the replacement of a small wireless facility with one that is similar in size to, the same size as or smaller than it as long as the wireless provider notifies the City of the replacement at least ten (10) days before the replacement. As used in this subparagraph, "micro wireless facility" means a small wireless facility less than twenty-four inches long, fifteen inches wide and twelve inches high whose exterior antenna, if any, is less than eleven inches long. The City may require a permit for routine maintenance or replacement of a small wireless facility in the rights-of-way that affect traffic patterns or require lane closures.

(f) Application Fees. The City may charge an applicant an application fee in the amount of one hundred dollars ($100) for each of up to five (5) small wireless facilities and fifty dollars ($50) for each additional small wireless facility whose colocation is requested in a single application.

Sec. 22-8-5 Application Review.

(a) Review of Small Wireless Facility Applications.

(1) The City shall review the application for a small wireless facility permit in light of its conformity with applicable regulations of this Article, and other applicable local ordinances, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

(i) Within ten (10) days of receiving an application for a small wireless facility, the City must determine and notify the applicant whether the application is complete. If an application is incomplete, the City must specifically identify the missing information in writing. Upon resubmission by the applicant, the City has ten
(10) days to notify the applicant again of an incomplete application and the shot clock will reset. Thereafter, the shot clock will be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines upon a resubmission that the application is incomplete. The processing deadline is then tolled from the date the City sends the notice of incompleteness to the date the applicant provides the missing information. The application is deemed complete if the applicant is not notified within the 10-day period subject to resetting the shot clock or tolling.

(ii) Make its final decision to approve or deny the application within sixty (60) days of receipt of an application for placement of small wireless facilities on an existing structure (subject to the resetting of the shot clock under federal law) and within ninety (90) days of receipt of an application for the placement of small wireless facilities on a new structure (subject to the resetting of the shot clock under federal law), and subject to the tolling provisions herein; and

(iii) Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, if any, including specific code provisions on which the denial was based, and send the documentation to the applicant. In the sixty (60) or ninety (90) days, as applicable, after the City receives an application to collocate a small wireless facility on an existing structure or a new structure, the City may provide public notice of the application and an opportunity for written public comment on the application, submit the written public comment to the applicant and request that the applicant respond to it. If the City determines that applicable codes or laws require that a utility pole or wireless support structure be replaced before an application for collocation is approved, the City may condition approval of the application on that replacement. The applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The City shall approve or deny the revised application within thirty (30) days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial. The City may require the applicant to certify that the small wireless facilities to be collocated conform with the FCC’s regulations concerning radio frequency emissions.

(2) If the City fails to act on an application within the sixty (60) or ninety (90) day review period, as applicable, subject to resetting the shot clock once and tolling, the application is deemed approved. The City may also request an extension of the sixty (60) or ninety (90) day period, and the City and the applicant may agree to extend that period. An applicant shall not unreasonably deny a City’s request to extend the period.

(3) The City may only deny a completed application to collocate small wireless facilities if the application does not conform with applicable codes or local laws concerning:

(i) public safety;
(ii) design for utility poles to the extent that the standards are objective;

(iii) stealth and concealment but only to the extent that the restrictions are reasonable; and

(iv) the spacing of ground-mounted equipment in a right-of-way; or

(v) if there is non-conformance with design district or historic district requirements.

(4) An applicant seeking to collocate small wireless facilities may, at the applicant’s discretion, file a consolidated application and receive a single permit for multiple small wireless facilities. Provided, that the City’s denial of one or more small wireless facilities in a consolidated application shall not delay the processing of any other small wireless facilities submitted in the same application.

(5) The City may require an applicant to obtain one or more permits to collocate a small wireless facility in a right-of-way if the requirement is of general applicability to users of the right-of-way. An applicant seeking to collocate within the City up to twenty-five (25) small wireless facilities, all of which are substantially the same type, on substantially the same types of structures, may file a consolidated application for the collocation of the facilities. An applicant shall not file with the City more than one consolidated application in any five-business-day period. The applicant shall include in a consolidated application an attestation that, unless a delay in collocation is caused by the lack of commercial power or fiber at the site, the collocation will begin within one hundred eighty (180) days after the permit issuance date. The City and provider may subsequently agree to extend that period.

Sec. 22-8-6 Small Wireless Facilities in the ROW: Maximum Height; Other Requirements.

(a) Maximum Size of Permitted Use. Small wireless facilities, and new or modified utility poles for the collocation of small wireless facilities, may be placed in the rights-of-way as a permitted use contingent upon the approval of an application by the City and subject to the following requirements:

(1) A new replacement or modified utility pole associated with the collocation of a small wireless facility in the right-of-way is not subject to zoning review and approval, except for that which pertains to under-grounding prohibitions, unless the utility pole is higher than whichever of the following is greater: ten (10) feet plus the height in feet of the tallest existing utility pole excluding a utility pole supporting wireless facilities that is in place on the effective date of the Act, located within five hundred (500) feet of the new, replacement or modified utility pole, in the same right-of-way, and fifty (50) or fewer feet above ground level or fifty (50) feet.

(2) New small wireless facilities in the rights-of-way may not extend:

   (i) More than ten (10) feet above an existing utility pole in the rights-of-way in place as of the effective date of this Article; or

   (ii) More than ten (10) feet above the height for a new utility pole.

(3) A small wireless facility collocated on a utility pole or wireless support structure that extends ten (10) or
fewer feet above the pole or structure in a right-of-way in any zone is classified as a permitted use and is not subject to zoning review or approval.

(b) Application Required for a Utility Pole. An application for the installation of a new, replacement or modified utility pole for the collocation of a small wireless facility in the right-of-way is required. The application shall be approved unless the installation does not conform with:

(1) applicable codes or laws regarding public safety, design, or under-grounding prohibitions if those regulations require under-grounding by a date certain within one (1) year after the application, include a waiver of zoning or other processes and allow the replacement of utility poles;

(2) federal or state standards for pedestrian access or movement;

(3) design or historic district requirements;

(4) contractual requirements between the City and a private property owner concerning the design of utility poles in the right-of-way; or

(5) the City’s laws concerning public safety and reasonable minimum spacing requirements for new utility poles in the rights-of-way.

(c) Application Processing. An application for a permit to install a new, replacement or modified utility pole for the collocation of a small wireless facility shall be processed within ninety (90) days after receipt of the application. If the City fails to act on the application within that time period, subject to resetting the shot clock once and tolling, the application is deemed approved. The application fee shall be seven hundred fifty dollars ($750).

Installation, modification or replacement shall begin within one hundred eighty (180) days after the permit issuance unless the City and wireless provider agree to extend that time or a delay is caused by a lack of commercial power or fiber at the site. The new, modified or replacement utility pole may be maintained for ten (10) years and the permit will be renewed for one ten (10) year period unless the utility pole does not conform with applicable codes or local laws. At the expiration of the permit renewal/extension, the permit shall lapse and a new application will be required.

(d) Zoning. Any wireless provider that seeks to install, modify, operate or replace a utility pole in the rights-of-way that exceeds the height or size limits contained in this Article shall be subject to applicable zoning requirements.

(e) Decorative Poles: A wireless provider shall be permitted to replace a decorative pole when necessary to collocate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative pole being replaced and shall be subject to local approval, which shall not be unreasonably denied.

(f) Underground District. In areas designated solely for underground or buried cable and utility facilities, the City shall allow replacement of City poles in the designated area. The wireless provider is permitted to seek a waiver of the undergrounding requirements for the placement of a new utility pole to support small wireless facilities.

(g) Historic and Design Districts. The City may require as they pertain to small wireless facilities located in design districts or historic districts reasonable, technically feasible, non-discriminatory and technologically neutral design or concealment measures and reasonable measures for conforming to the design aesthetics of design districts or
historic districts. Any such measures may not have the effect of prohibiting a wireless provider's technology.

Sec. 22-8-7 Effect of Permit.

(a) Authority Granted. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Article and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) Permit Duration. Work described in a permit granted pursuant to this Article shall be completed within one hundred eighty (180) days of the permit issuance date unless the City and applicant agree to extend this period due to delay caused by the lack of commercial power or communications facilities. Subject to applicable relocation requirements and the applicant's right to terminate collocation at any time, the permit is valid for a period of ten (10) years, and will be renewed for one ten-year term unless the City finds that the small wireless facility does not conform with applicable codes and local laws. At the expiration of the permit renewal/extension, the permit shall lapse and a new application will be required.

Sec. 22-8-8 Removal, Relocation or Modification of Small Wireless Facilities in the ROW.

(a) Notice. Within ninety (90) days following written notice from the City, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.

(b) Emergency Removal. The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.

(c) Abandonment of Facilities. Upon abandonment of a small wireless facility or utility pole within the rights-of-way of the City, the wireless provider shall notify the City in writing of its intention to discontinue use of a small wireless facility or utility pole. The notice shall inform the City of the time and the way in which the small wireless facility or utility pole will be removed. The wireless provider is responsible for the costs of the removal. The City may require the wireless provider to return the property to its pre-installation condition according to the City's reasonable and nondiscriminatory requirements and specifications. If the wireless provider does not complete the removal within forty-five (45) days after notice, the City may complete the removal and assess the costs of removal against the wireless provider. The permit for the small wireless facility or utility pole expires upon removal.

(d) Damage and Repair. The City may require a wireless provider or the provider's contractor to repair all damage to the City's property or rights-of-way caused by the activities of the wireless provider or contractor and return the property and rights-of-way to their pre-damage condition according to the City's requirements and specifications upon written notice of the requirements to the provider. If the wireless provider fails to make the repairs within a reasonable period
after receiving the notice, the City may effectuate those repairs and charge the provider the reasonable, documented cost of such repairs.

Sec. 22-8-9 Rates.

(a) Annual Rate for Use of Right-of-Way. The City may charge a wireless provider for the provider's use of the right-of-way in constructing, installing, maintaining, modifying, operating or replacing a utility pole or in collocating a small wireless facility in the right-of-way an annual rate of two hundred fifty dollars ($250) multiplied by the number of small wireless facilities placed by the wireless provider in the City's right-of-way.

(b) Annual Rate Increase for Use of Right-of-Way. To the extent allowed by law, the City may adjust the annual rate, but no more often than once a year and by no more than an amount equal to one-half the annual change, if any, in the most recent Consumer Price Index for all urban consumers for New Mexico, as published by the United States Department of Labor. The City shall notify all wireless providers charged the pre-adjusted rate of the prospective adjustment and shall make the adjustment effective sixty (60) days or more following that notice.

(c) Annual Rate for Use of City Utility Poles. The rate for collocation of a small wireless facility on a City utility pole in the right-of-way shall be twenty dollars ($20) per year.

Sec. 22-8-10 Attachment to or Utility Poles in the Right-of-Way.

(a) Placement of Small Wireless Facilities and Poles. Subject to the approval of an application by the City, a wireless provider may collocate small wireless facilities and construct, install, modify, mount, maintain, operate and replace utility poles associated with the collocation of a small wireless facility along, across, on or under City right-of-way. The City shall not enter into an exclusive agreement with a wireless provider for the use of a right-of-way in constructing, installing, maintaining, modifying, operating or replacing a utility pole or collocating a small wireless facility on a utility pole or wireless support structure.

(b) Review of Applications. The City shall process an application for approval to collocate a small wireless facility on a City utility pole in accordance with this Article. The City may condition the issuance of a permit on the wireless provider's replacement of the City utility pole if applicable codes or local laws concerning public safety require such replacement. The City shall process an application for a permit to install a replacement City pole in accordance with this Article. The City shall retain ownership of the replacement utility pole.

Sec. 22-8-11 Proper Placement.

(a) A wireless provider that deploys a utility pole or small wireless facility in a right-of-way shall construct, maintain and locate it so as not to obstruct travel, endanger the public or interfere with another utility facility in the right-of-way. The wireless provider's operation of a small wireless facility in the right-of-way shall not interfere with the City's public safety communications. The wireless provider shall comply with the National Electric Safety Code and all applicable laws. The City may, through its Public Works Department, adopt reasonable regulations concerning the separation of the wireless provider's utility poles and small wireless facilities from other utility facilities in the right-of-way.

(b) If the City determines that a utility pole or the wireless support structure of a wireless provider must be relocated to accommodate a public project, the provider shall assume the
cost of relocating the wireless facility deployed on the pole or structure.

(c) Without the City’s written consent, a wireless provider shall not install a new utility pole in a right-of-way adjacent to a street or thoroughfare that is fifty (50) feet wide or less and adjacent to single family residential lots or other multifamily residences or to undeveloped land designated for residential use by zoning or deed restrictions.

(d) **Exempt From Zoning Review.**

(1) Small wireless facilities, DAS, and other similar networks on poles in public rights-of-way, on City-owned property, on private property, or on other structures, including stealth facilities, monopoles or replacement poles under fifty (50) feet that are located in the public rights-of-way for placement of small wireless facilities, DAS, and other similar networks, are exempt from zoning review and shall be subject only to encroachment or building permits by administrative review.

(2) Notwithstanding any other provision of this Article, the City may not require an applicant or provider to submit an application or pay a rate for:

(i) routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

(ii) replacing or upgrading a small wireless facility, DAS, or other similar network with a facility that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

(iii) temporary small wireless facilities, DAS or communications facilities placed for a period of not more than:

(a) twenty-one (21) days for temporary uses related to special events;
(b) ninety (90) days for temporary uses related to repair of facilities; or
(c) not more than ninety (90) days at any location within the City after declaration of an emergency or a disaster by the Governor of New Mexico.

(3) For purposes of the foregoing exemptions, a small wireless facility, DAS, other similar network, or pole is considered to be “substantially similar” if:

(i) the new or upgraded facility, including the antenna or other equipment element, will not be more than ten (10) percent larger on a one-time basis than the existing facility, provided that the increase may not result in the facilities exceeding the size limitations provided elsewhere in this Article;

(ii) the new or upgraded pole will not be higher than the existing pole;

(iii) the replacement or upgrade does not include replacement of an existing service pole;

(iv) the replacement or upgrade does not defeat existing concealment elements of the existing pole; and

(v) The determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the small
wireless facility or pole as approved by the City.

(e) **Collocation.** Support structures for small wireless facilities or similar networks shall be capable of accommodating the collocation of other service providers.

(f) **Signage.** Signs located at the small wireless facilities, DAS, and similar networks shall be limited to ownership and contact information, FCC Antenna registration number (if required) and any other information as required by an applicable governmental authority. Commercial advertising is strictly prohibited.

(g) **Accessory Equipment.** Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment in support of the operation of the small wireless facility or its support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

**Sec. 22-8-12 General Requirements for Towers and Poles.**

(a) **Inventory of Existing Sites.** Each applicant for a pole or tower exceeding the height limitation of the affected zoning district shall provide to the Planning Division an inventory of its existing poles or towers that are either within the jurisdiction of the City or within one (1) mile of the border thereof, including specific information about the location, height, and design of each pole or tower. The applicant shall only be required to provide this information in its first application following implementation of this Article, and not thereafter. The Planning Division may share such information with other applicants applying for permits under this Article or other organizations seeking to locate poles or towers within the jurisdiction of the City, provided, however, that the Planning Division is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(b) **Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(c) **State or Federal Requirements.** All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Article shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency.

(d) **Building Codes; Standards.** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable industry standards for towers, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower at the owner's expense.

(e) **Visual Impact.** All towers, poles and small wireless facilities, including equipment enclosures, shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the
greatest extent reasonably possible, consistent with the
proper functioning of the structure or equipment. Such
equipment enclosures shall be integrated through location and
design to blend in with the existing characteristics of the
site. Such enclosures shall also be designed to either
resemble the surrounding landscape and other natural features
where located in proximity to natural surroundings, or be
compatible with the built environment, through matching and
complimentary existing structures and specific design
considerations such as architectural designs, height, scale,
color and texture or be consistent with other uses and
improvements permitted in the relevant zone.

(1) Towers shall either maintain a galvanized steel finish
or, subject to any applicable standards of the FAA, be
painted a neutral color so as to reduce visual
obtrusiveness.

(2) At a tower site, the design of the buildings and
related structures shall, to the extent possible, use
materials, colors, textures, screening, and landscaping
that will blend them into the natural setting and
surrounding buildings.

(3) If an antenna is installed on a structure other than a
tower, the antenna and supporting electrical and
mechanical equipment must be of a neutral color that is
identical to, or closely compatible with, the color of
the supporting structure so as to make the antenna and
related equipment as visually unobtrusive as possible.

(f) Use of Stealth Design. Concealment techniques in design
districts and historic districts must be appropriate given
the proposed location, design, visual environment, and nearby
uses, structures, and natural features. Stealth design shall
be designed and constructed to substantially conform to
surrounding building designs or natural settings, so as to be
visually unobtrusive.

(g) Building-mounted Equipment,

(1) All transmission equipment shall be concealed within
existing architectural features to the maximum extent
feasible. Any new architectural features proposed to
conceal the transmission equipment shall be designed to
mimic the existing underlying structure, shall be
proportional to the existing underlying structure or
conform to the underlying use and shall use materials
in similar quality, finish, color and texture as the
existing underlying structure.

(2) All roof-mounted transmission equipment shall be set
back from all roof edges to the maximum extent feasible
consistent with the need for “line-of-sight”
transmission and reception of signals.

(3) Antenna arrays and supporting transmission equipment
shall be installed so as to camouflage, disguise or
conceal them to make them closely compatible with and
blend into the setting or host structure.

(h) Pole-mounted or Tower-mounted Transmission Equipment. All
pole-mounted or tower-mounted transmission equipment shall be
mounted as close as possible to the pole or tower so as to
reduce the overall visual profile to the maximum extent
feasible consistent with safety standards.

(i) Concealment of Pole-mounted Equipment. All pole-mounted
equipment must be reasonably concealed to the extent
technically feasible in a manner that minimizes the visual
impact of the pole-mounted equipment. The concealment method
and materials must receive prior written approval from the
City, not to be unreasonably withheld. Antenna size
limitations are exclusive of any concealment materials or
fabrication. Concealment materials shall have a color and
finish consistent and appropriate with the pole on which they are mounted.

(j) Accessory Equipment. All accessory equipment located at the base of a small wireless facility shall be located or placed (at the applicant’s choice) in an existing building, underground, or in an equipment shelter that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) be located so as to be unobtrusive as possible consistent with the proper functioning of the small wireless facility.

(k) Site Design Flexibility. Individual small wireless facility sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the small wireless facility and supporting equipment may be installed so as to best camouflage, disguise them, or conceal them, to make them more closely compatible with and blend into the setting or host structure.

(l) Structural Assessment. The owner of a proposed tower shall have a structural assessment of the tower conducted by a professional engineer, licensed in the State of New Mexico, which shall be submitted with the application for a permit.

(m) Radio Frequency Emissions Compliance Report. A Radio Frequency ("RF") emissions compliance report will be prepared, signed and sealed by a New Mexico-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed small wireless facility demonstrates compliance with the exposure limits established by the FCC. The employee of the applicant must be qualified in the field of RF emissions and provide satisfactory evidence of his/her qualifications to the City.

(n) Residential Provisions.

1. All small wireless facilities on residentially zoned property are encouraged to either be painted or treated the same color as the primary structure or the surface to which the facilities are attached.

2. Screening or painting of roof-mounted structures is required on all sides of the residential property in which a small wireless facility is to be or is placed.

(o) Screening of Ground-mounted Equipment. Ground equipment and equipment enclosures outside of the right-of-way shall be screened by a screen wall, painted, and/or landscaped.

1. Screening and equipment enclosures shall blend with or enhance the surrounding area in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment. All screening shall be at the reasonable discretion of the City.

2. When trees, bushes, rocks, and other forms of landscaping are used for screening, such landscaping must match the predominant landscaping form and species within one block of the facilities.

(p) Additional Screening Requirements. Any new, modified, or replacement poles installed in the right-of-way in conjunction with the installation of a small wireless facility, including any ground mounted equipment, electrical service meter, and screening shall:

1. Be designed to blend in with the surrounding streetscape with minimal visual impact;
(2) Satisfy all required Americans with Disabilities Act requirements;

(3) Not impair or interfere with line of sight visibility; and

(4) Not block or obstruct existing roadway or commercial signage.

Sec. 22-8-13 Preferred Tower Locations

(a) New small wireless facilities must, to the maximum extent feasible, be collocated on existing towers or other structures of a similar height to avoid construction of new towers.

(b) The City encourages all applicants for new towers to follow siting priorities, from most-preferred (1) to least-preferred (8):

(1) City-owned or operated property or facilities, not including rights-of-way;

(2) commercial and industrial zones;

(3) office zones;

(4) other non-residential zones;

(5) City rights-of-way in non-residential zones;

(6) City rights-of-way in residential zones;

(7) parcels of land in residential zones;

(8) designated design or historic districts.

(c) Collocation Consent. A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed small wireless facility whenever technically and economically feasible and aesthetically desirable.

(d) Documentation. Applications submitted under this Article for small wireless facilities shall include the following materials:

(1) A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view.

(2) A written analysis that explains how the proposed design complies with the applicable design standards under this Article to the maximum extent feasible. A design justification must identify all applicable design standards under this Article and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.

(3) A noise study, if requested by the City.

(4) A scaled site plan clearly indicating the location, type, height and width of the proposed small wireless facilities, on-site land uses and zoning, adjacent land uses and zoning, separation distances, adjacent roadways, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings of the proposed small wireless facilities and any other structures, topography and utility runs.
(5) The setback distance between the proposed small wireless facility and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.

(6) The separation distance from other poles and towers within one (1) mile of the subject pole or tower, shall be shown on an updated site plan or map.

(7) If applicable, the method of camouflage and illumination.

(8) A written statement of purpose which shall minimally include: (1) a description of the objective to be achieved; (2) a to-scale map that identifies the proposed site location and the targeted service area to be benefitted by the proposed project; and (3) full-color signal propagation maps with objective units of signal strength measurement that show the applicant’s current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by a New Mexico-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.

Sec. 22-8-14 Independent Technical and Legal Review. Although the City intends for City staff to review administrative matters to the extent feasible, the City may retain the services of independent experts of its choice to provide technical and legal evaluations of permit applications for small wireless facilities, towers and poles. The expert’s review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed small wireless facilities comply with the applicable approval criteria set forth in this Article. The applicant shall pay the actual, direct and reasonable cost for any independent consultant fees through a deposit, paid within ten (10) days of the City’s request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City.

Sec. 22-8-15 Safety Review.

(a) For the period beginning on the date a permit is issued and ending on the date the permitted work is accepted, the City may perform a safety review of construction, reconstruction or installation of all small wireless facilities and poles as it deems necessary to ensure compliance with this Article and the Municipal Code. All City plans, reviews, inspections, standards, and other rights and actions related to the wireless provider’s improvements are for the City’s sole and exclusive benefit and neither the wireless provider nor any other person may rely on the City’s safety reviews or have any rights related to the reviews. The preceding sentence does not prevent the wireless provider from relying on consents, permits, or approvals the City may grant based on the City’s plans, reviews, and inspections. As a condition of obtaining the permits authorized by this Article, the wireless provider grants the City the right to access the wireless provider’s small wireless facilities and poles. Except for emergencies, this right of access is limited to dates and times agreed to by the parties.

(b) To the extent allowed by law, the City may recover the City’s costs incurred to perform such safety reviews.
Sec. 22-8-16 Final Inspection.

(a) A certificate of completion will only be granted upon satisfactory evidence that the small wireless facilities were installed in substantial compliance with the approved plans.

(b) If it is found that the small wireless facilities installation does not substantially comply with the approved plans, the applicant shall make any and all such changes required to bring the facilities into compliance promptly and in any event prior to putting the facilities in operation.

Sec. 22-8-17 Compliance.

(a) All small wireless facilities must comply with all standards and regulations of the FCC and any State or other federal government agency with the authority to regulate those facilities.

(b) The site and small wireless facilities, including all landscaping, fencing and related transmission equipment, must be maintained at all times in a neat and clean manner.

(c) If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

Sec. 22-8-18 Indemnification. Each permit issued for small wireless facilities located in City right-of-way or on other City property shall be deemed to have as a condition of the permit a requirement that the wireless provider defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys’ fees and expenses) arising out of claims, suits, demands, actions or causes of action as a result of the construction, performance, operation, maintenance, repair, replacement, removal, or restoration of the small wireless facilities.

Sec. 22-8-19 Laws, Rules and Regulations. This Ordinance shall be subject to all applicable laws, rules and regulations now or hereafter enacted.

Sec. 22-8-20 Severability. The various parts, sentences, paragraphs, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Sec. 22-8-21 Conflicts. In the event of a conflict between the provisions of this Article, federal laws, rules, regulations, FCC Orders or the Act, the more restrictive shall control. Any ordinance or parts thereof or other provisions of the Municipal Code in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

PASSED, SIGNED, APPROVED AND ADOPTED this 23rd day of April, 2019.

Nate Duckett, Mayor

ATTEST:

Andrea Jones, Deputy City Clerk

- 7.16 -
Regular Meeting of the City Council, City of Farmington, New Mexico, held in the Council Chamber at City Hall at 6:00 p.m. on Tuesday, April 9, 2019. The open regular session was held in full conformity with the laws and ordinances and rules of the Municipality.

Upon roll call, the following were found to be present, constituting a quorum:

MAYOR                                      Nate Duckett
COUNCILORS                    Linda G. Rodgers
                                Sean B. Sharer
                                Jeannine Bingham-Kelly
                                Janis Jakino
constituting all members of said Governing Body.

Also present were:

CITY MANAGER                  Rob Mayes
ASSISTANT CITY MANAGER        Julie Baird
CITY ATTORNEY                Jennifer Breakell
CITY CLERK                    Dianne Smylie

The meeting was convened by the Mayor. Thereupon the following proceedings were duly had and taken:

INVOCATION: The invocation was offered by Pastor David Florez of The Journey Church.

Electric Utility Director Hank Adair led the Pledge of Allegiance.

Due to the length of tonight's agenda, Mayor Duckett asked that consideration of the First Amendment to Letter of Intent between the City and Acme Equities, LLC and Enchant Energy Corporation be heard after consideration of the bid for in-car and body camera systems. There were no objections from the Council.

CONSENT AGENDA: The Mayor announced that those items on the agenda marked with an asterisk (*) have been placed on the Consent Agenda and will be voted on without discussion by one motion. He stated that if any item did not meet with approval of all Councilors or if a citizen so requested, that item would be removed from the Consent Agenda and heard under Business from the Floor.

*MINUTES: The minutes of the Regular Meeting of the City Council held March 26, 2019.

*BID: The Contracts Administrator recommended that the bid for purchase of trucking services (Public Works) be awarded to the lowest and best bidder per category after application of the five percent in-state and Veterans preferences (Envirotech, Inc. - $92,312.50; Sierra Oilfield Services, Inc. - $18,250; Herrera Trucking LLC - $107,500; GBL Trucking LLC - $103,750; and Rosie Atencio Trucking - $103,750). Bids opened March 26, 2019 with five bidders participating.

*WARRANTS PAYABLE for the time period of March 24, 2019 through April 6, 2019, for current and prior years, in the amount of $8,030,595.85.

There being no requests to remove any items, a motion was made by Councilor Sharer, seconded by Councilor Rodgers to approve the Consent Agenda, as presented, and upon voice vote the motion carried unanimously.

RESOLUTION NO. 2019-1706/Fair Housing Month

Community Development/Public Works Director David Sypher introduced newly-hired Associate Planner Franciaco (Paco) Alvarado. Mr. Alvarado presented Resolution No. 2019-1706 pertaining to fair housing, noting that this is a requirement for participation in the Community Development Block Grant ("CDBG") Program. The title of the resolution being:
A RESOLUTION DESIGNATING THE MONTH OF APRIL, 2019 AS “FAIR HOUSING MONTH.”

After consideration of Resolution No. 2019-1706, a motion was made by Councilor Rodgers, seconded by Councilor Sharer that said resolution be passed and adopted as presented. The roll was called with the following result:

Those voting aye: Linda G. Rodgers
Sean E. Sharer
Jeanine Bingham-Kelly
Janis Jakino

Those voting nay: None

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried and Resolution No. 2019-1706 was duly passed and adopted.

BID/LEASING SERVICES FOR AN IN-CAR AND BODY CAMERA SYSTEM

Utilizing a PowerPoint presentation, Deputy Police Chief Jessica Tyler reported that staff is unable to purchase replacement parts (such as batteries) for the current L3 in-car and body camera system and stated that staff has recommended that this system be replaced with WatchGuard since it provides high-definition video, redaction and low-light capabilities, a stabilizing platform, integration between the in-car and body cameras, and offers a five year warranty. She pointed out that the WatchGuard system has been tested and approved by the police officers and noted that L3 withdrew from the testing process because they cannot offer a next generation camera system.

Contracts Administrator Rosalyn Potter reported that bids for leasing services for an in-car and body camera system (Police) opened on February 27, 2019 with two bidders participating. She recommended that the bid be awarded to Fleetwood Finance Leasing, LLC as the lowest and best bidder meeting specifications for Option B (a 60-month lease) at a cost of $1,416,991.80. She noted that this amount is for 128 cameras, a new server and disc publisher and all accessories.

City Manager Rob Myers pointed out that this project is slated to be paid for by revenue generated from the 1/8 percent dedicated Public Safety Tax that took effect in January.

Thereupon, a motion was made by Councilor Rodgers, seconded by Councilor Jakino to award the bid for purchase of leasing services for the WatchGuard in-car and body camera system to Fleetwood Finance Leasing, LLC to be paid with monies from the Public Safety Fund, as recommended, and upon voice vote the motion carried unanimously.

FIRST AMENDMENT/LETTER OF INTENT/SAN JUAN GENERATING STATION

City Attorney Jennifer Breakell presented the First Amendment to Letter of Intent between the City and Acme Equities, LLC ("Acme") regarding the intent of Acme to purchase all of the acquired assets and assume liabilities for San Juan Generating Station ("SJGS"). She explained that the proposed amendment will assign the rights and obligations of the initial Letter of Intent to Enchant Energy Corporation ("Enchant"), the New Mexico affiliate for Acme. She also pointed out that the exclusivity period is being extended by six months to September 21, 2019 for the purpose of allowing Enchant to hire the engineering firm Sargent & Lundy to prepare an initial feasibility study. She noted that this is the same engineering firm that conducted the feasibility study for carbon sequestration technology on SJGS for Public Service Company of New Mexico. Furthermore, Ms. Breakell reported that Enchant plans to apply for a grant from the U.S. Department of Energy in relation to carbon sequestration technology and that they must also coordinate with the City and the other remaining owners of SJGS for transfer of the interests. She noted that the proposed First Amendment provides an outline of the issues that will be discussed and negotiated in development of a future Purchase Agreement.

In response to inquiry from Councilor Rodgers, Ms. Breakell confirmed that Enchant is responsible for the costs associated with the feasibility study. She also stated that it is her opinion that there is no downside to signing the proposed First Amendment other than it extends the exclusivity period for six months.
Responding to concerns expressed by Councilor Sharer, Ms. Brekell confirmed that the City is under no obligation at this time to sell SJGS and stated that Enchant intends to have the feasibility study completed mid-summer.

At the request of a member from the audience, Mayor Duckett opened the meeting for public comment, noting that he had intended to allow public comment at the time the Purchase Agreement was presented for consideration.

Joe Rogers, 5480 Rascalante Trail, questioned whether the grant application was "chasing federal money" since he is unsure how it will fit into the process of transferring ownership. In response, Ms. Brekell reported that the grant funding is not required for Enchant to complete the feasibility study, but noted that the Department of Energy suggested that they apply because they are supportive of carbon sequestration technology at SJGS. Expanding on her comments, City Manager Rob Mayes explained that Enchant is paying for the initial feasibility study and is hopeful that federal grant funding will help pay for the full-scale engineering study.

Joanne Duckwitz, 724 El Paso Drive, addressed the Council as a member of the Public Utility Commission ("PUC") and questioned whether the proposed First Amendment will prevent the City from considering other offers during the exclusivity period. In response, Ms. Brekell confirmed that it would and Mr. Mayes pointed out that current legislation prohibits operation of the plant without carbon sequestration technology.

Also addressing the Council as a member of PUC, Gordon Glass cautioned the Council about "getting the hopes up" for this community because similar projects within the United States and other countries have fallen into disarray due to complexity and cost. He is concerned that a lot of effort will be spent on a process that is highly unlikely. In response, Ms. Brekell pointed out that there has been several articles published within the last few days indicating that major oil and gas companies are investing in their own carbon sequestration technology because it has been proven to work and some sources estimate that the costs have plummeted 60 to 70 percent in the last three years.

Mayor Duckett explained that he believes that the City has an obligation to do everything possible to save SJGS or else it will send a message to those workers that "we don't care and your jobs don't matter." He stated that "when he goes to sleep at night, he wants to know that he has done everything that he can" and he pointed out that SJGS is critical to the economy of this area. He acknowledged that the proposal is "gutty" and he stated that he believes that due diligence is essential even if it is time consuming. Furthermore, he reported that George Sharpe, Investment Manager for Merrion Oil & Gas Corporation and former City Councilor, made a presentation last week at Leadership New Mexico's Local Government Leadership Program on the realities of carbon power, noting that it is the least expensive and most readily available source and will remain in high demand because it affects every aspect of human existence.

There being no further discussion, a motion was made by Councilor Rodgers, seconded by Councilor Sharer to approve the First Amendment of Letter of Intent between the City and Acme Equities, LLC and Enchant Energy Corporation concerning the potential acquisition of all assets and assumption of certain identifiable liabilities of the San Juan Generating Station, and upon voice vote the motion carried unanimously.

APPOINTMENT TO THE LODGERS' TAX ADVISORY BOARD

Mayor Duckett asked the Council's consideration of the appointment of Addie Betancourt as a member of the Lodgers' Tax Advisory Board (term to July 2019).

Thereupon, a motion was made by Councilor Rodgers, seconded by Councilor Sharer to confirm the appointment of Addie Betancourt as a member of the Lodgers' Tax Advisory Board, as recommended by the Mayor, and upon voice vote the motion carried unanimously.

RECOGNITION OF HUMAN RESOURCES DIRECTOR TOM SWENK

City Manager Rob Mayes recognized Human Resources Director Tom Swenk for being named the 2013 New Mexico Human Resources Professional of the Year by the Society for Human Resources Management. He noted that Mr. Swenk has served as the human resources director for the past seven years and has brought in new trainings, restructured the City's pay plan and implemented the national program, "Project Search" which is the first to be
implemented by a municipality. Mr. Mayes stated that Mr. Swenk is a dedicated, people-focused leader who works diligently to strike a balance between the needs of the organization with the needs of the employees and he offered his sincere congratulations.

Mr. Swenk thanked his fellow colleagues in the Human Resources Department and he briefly explained Project Search, noting that a more in-depth presentation is being scheduled for next week’s City Council Work Session.

UPDATE/FOUR CORNERS REGIONAL AIRPORT AND AIRLINE SERVICE

Utilizing a PowerPoint presentation, Airport Manager Mike Lewis reported that the latest report from the New Mexico Department of Transportation indicates that Four Corners Regional Airport contributes nearly $23 million annually to the local economy when airline service is being offered; provides an all-weather, 24-hour facility for aviation activity, including air ambulance and medical transfer flights; supports the mission of all branches of the military; provides a base for Federal Express and United Parcel Service (UPS); offers hangars and services to the locally-based general aviation community; and has 120 acres available on the north side of the runway for construction of an aviation-related business park. In addition, Mr. Lewis stated that Four Corners Regional Airport ranked second in the number of general aviation operations with 11.5 percent of the New Mexico total, fifth in the number of based aircraft; and provides employment for 100 people employed by 14 separate organizations. With regard to airline service, Mr. Lewis reported that in early October, 2017, Great Lakes Airlines notified the City that they would be ceasing operation on October 31. As a result, he and City Manager Rob Mayes hired ArkStar Group to explore the air service options available and by November 15, 2017, the Managing Director at SkyWest Development at SkyWest had expressed serious interest provided that the airport be upgraded to a C-II reference Code. In December, 2017, staff initiated discussions with the Federal Aviation Administration Program Manager to revamp the Capital Improvement Plan for the next five years to facilitate improvements that would allow regional jet traffic by extending the safety areas on the runways to 1,000 feet and relocating the taxiways further away from the runways. In July, 2018, staff was awarded $850,000 from the Small Community Air Service Development Program (SCASDP) to complete the needed improvements which total $23.19 million. He noted that the grant funding will be available for five years and stated that the proposed improvements will be funded by $21,750,000 from the Federal Aviation Administration; $724,688 from the State of New Mexico; and $724,688 from the City of Farmington (an average cost of $145,000 per year). In closing, he noted that he anticipates the improvements to be completed by early 2020, at which time staff will discuss implementing air service with SkyWest.

Councillor Rodgers commended Mr. Lewis for his efforts in securing air service at Four Corners Regional Airport.

BUDGET HEARING #1 - INTRODUCTION OF THE CAPITAL IMPROVEMENT PLAN

City Manager Rob Mayes explained that the purpose for tonight’s discussion is to provide the Council with an opportunity to review the proposed Fiscal Year 2020 ("FY20") Capital Improvement Plan ("CIP") and to provide direction to staff on how to proceed with budgeting the numerous capital projects.

Directing the Council’s attention to pages 4.0 to 4.6 of the agenda materials, Acting Administrative Services Director Teresa Emrich explained the methodology used in determining the FY20 project list and budget associated with the proposed capital projects. With regard to Fund 201 (GRT-Streets), she noted that staff is recommending that $670,000 be budgeted for vehicle replacement; $760,000 for storm sewer construction; $750,000 for Broadway Street bridge repairs; $450,000 for Airport Drive bridge repairs; and $1 million for street resurfacing. She noted that $30,780,000 for capital pavement maintenance and $1,520,000 for non-capital pavement maintenance is budgeted in the bond resurfacing project. With regard to Fund 202 (GRT-Parks), Ms. Emrich pointed out that $116,000 has been budgeted for equipment upgrades and vehicles; $136,332 for lighting and field maintenance at the Soccer Complex; $50,000 for equipment upgrades at Pinoon Hills Golf Course; and $225,000 to replace the slide at the Aquatic Center. She also noted that $5,000 is budgeted for the Animas River Restoration “Rock Garden” project; $55,000 for vehicles at the Senior Center; and $160,000 for parking lot rehabilitation (northwest side) at the Senior Center Annex building from the 214 Fund (Parks Gifts and Grants). Continuing with the presentation, she reported that $1,084,000 is budgeted
for the Villa View Detention Pond: $1,300,000 for Foothills Drive enhancements; and $881,774 for the 20th Street Sidewalk Improvements project from the 401 Fund (Public Works Capital Grant). With regard to the 403 Fund (2017/2018 Series GRT Projects), Ms. Emrich noted that $434,000 is budgeted for the Among the Waters Trail Development and $4,847,618 for the downtown Complete Streets project. She noted that $40,000 is budgeted for Aircraft Rescue and Firefighting proximity gear and $3,500,000 for runway upgrades and construction in the 409 Fund (Airport Grants) and stated that $245,844 is been budgeted for the downtown Complete Streets project in the 411 Fund (Metropolitan Redevelopment Authority). She also briefly reviewed the 221 (Red Apple Transit Grant), the 223 (Community Development Block Grant), and the 412 (Park Development Fees) Funds.

In closing, City Manager Rob Mayes reported that this is the first step in the FY20 budget process, noting that a more in-depth presentation will be made at a Special City Council Work Session scheduled for 9:00 a.m. on Tuesday, May 7 in the Executive Conference Room.

CITY ATTORNEY BUSINESS

In accordance with the State Open Meetings Act, City Attorney Jennifer Breakell presented and read by title a resolution setting and establishing the regular day, time and place for City Council meetings. The title of the resolution being:

A RESOLUTION SETTING AND ESTABLISHING A REGULAR MEETING DAY, TIME AND PLACE FOR CITY COUNCIL MEETINGS PURSUANT TO CITY COUNCIL RESOLUTION NO. 2013-1466.

Councilor Jakino briefly left the meeting.

Following brief consideration, a motion was made by Councilor Sharer, seconded by Councilor Rodgers to establish the regular day, time and place for City Council meetings as the second and fourth Tuesdays of each month at 6:00 p.m. in the Council Chamber of the Municipal Building, 800 Municipal Drive, Farmington, New Mexico. The roll was called with the following result:

Those voting aye: Linda G. Rodgers
Sean E. Sharer
Jeanine Bingham-Kelly

Those voting nay: None

Those absent: Janis Jakino

The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried and the resolution was duly passed and adopted as presented.

Ms. Breakell also presented and read by title Resolution No. 2019-1707 authorizing a grant application for street improvements. The title of the resolution being:

A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION TO THE NEW MEXICO FINANCE AUTHORITY FOR FINANCIAL ASSISTANCE FOR STREET IMPROVEMENTS.

Councilor Jakino returned to the meeting.

Utilizing a PowerPoint presentation, Evan Kist, Financial Advisor for RBC Capital Markets, reported that similar information was presented to the Council at a Work Session in January but noted that interest rates have dropped so the bond issue amount will be approximately $500,000 more than initially projected. He reported that the projected bond amount will be $13,105,000 with an approximate interest rate of 3.50 percent and a projected closing date of June 26, 2019. He also pointed out that the bonds will be repaid with a portion (50 percent) of the 1/8 percent gross receipts tax that was implemented in January, or about $1.1 million per year.

Following consideration of Resolution No. 2019-1707, a motion was made by Councilor Rodgers, seconded by Councilor Sharer that said resolution be passed and adopted as presented. The roll was called with the following result:

Those voting aye: Linda G. Rodgers
Sean E. Sharer
Those voting nay: None

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried and Resolution No. 2019-1707 was duly passed and adopted.

Lastly, Ms. Breakell presented for discussion a proposed ordinance dealing with wireless (small cell) communication facilities. The title of such ordinance being:

AN ORDINANCE AMENDING CHAPTER 22 OF THE CITY CODE BY ADDING A NEW ARTICLE 8 ENTITLED "WIRELESS COMMUNICATION FACILITIES;" PROVIDING DEFINITIONS; PROVIDING FOR PERMITS; AND PROVIDING FOR SEVERABILITY.

There being no discussion, Ms. Breakell announced that the proposed ordinance will be presented for final action at the April 23, 2019 regular City Council meeting.

CLOSED MEETING

A motion was made by Councilor Rodgers, seconded by Councilor Sharer to close the meeting to receive advice from the City's legal counsel regarding a matter of pending litigation (Case No. 17-00174-UT: Public Service Company of New Mexico’s 2017 Integrated Resource Plan), pursuant to Section 10-15-1H(7) NMSA 1978. The roll was called with the following result:

Those voting aye: Linda G. Rodgers
Sean R. Sharer
Jeanine Bingham-Kelly
Janis Jakino

Those voting nay: None

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried.

The Mayor convened the closed meeting at 7:42 p.m. with all members of the Council being present.

Following the closed meeting, during which meeting the matter discussed was limited only to that specified in the motion for closure, a motion was made by Councilor Rodgers, seconded by Councilor Sharer to open the meeting, and upon voice vote the motion carried unanimously.

The open meeting was reconvened by the Mayor at 8:16 p.m. with all members of the Council being present and there being no further business to come before the Council, a motion was made by Councilor Rodgers, seconded by Councilor Jakino to adjourn the meeting at 8:17 p.m., and upon voice vote the motion carried unanimously.

The City Clerk certified that notice of the foregoing meeting was given by posting pursuant to Resolution No. 2013-1466, et seq.

Approved this 23rd day of April, 2019.

Entered in the permanent record book this day of , 2019.

Nate Duckett, Mayor

ATTEST:

Andrea Jones, Deputy City Clerk