

**SILVER CITY, NEW MEXICO
RESOLUTION NO. 2012-30**

AUTHORIZING THE EXECUTION AND DELIVERY OF A COLONIAS INFRASTRUCTURE PROJECT FUND GRANT AGREEMENT BY AND AMONG THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), THE COLONIAS INFRASTRUCTURE BOARD, (THE "CIB") AND SILVER CITY, NEW MEXICO (THE "GOVERNMENTAL UNIT"), IN THE AMOUNT OF ONE HUNDRED AND TWENTY EIGHT THOUSAND AND NINETY NINE DOLARS (\$128,099) EVIDENCING AN OBLIGATION OF THE GOVERNMENTAL UNIT TO UTILIZE THE GRANT AMOUNT AND THE ADDITIONAL FUNDING AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF REGIONAL PRELIMINARY ENGINEERING REPORT, AND SOLELY IN THE MANNER DESCRIBED IN THE GRANT AGREEMENT; CERTIFYING THAT THE GRANT AMOUNT, TOGETHER WITH THE ADDITIONAL FUNDING AMOUNT AMOUNT 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 Governmental Unit is a legally and regularly created, established organized and existing Municipality under the general laws of the State of New Mexico particularly, NMSA 1978, §§ 3-1-1 through 3-1-6 (2010 as amended through 2012) (the "Municipal Code"); and

WHEREAS, the Governmental Unit is a Qualified Entity to receive the Grant pursuant to the Board Rules and the Finance Authority's Policies and NMSA 1978, §6-30-8 (2012 as amended through 2012); and

WHEREAS, the Governmental Unit is a Qualified Entity to receive the Grant pursuant to the Rules and the Colonias Infrastructure Act; and

WHEREAS, the Governmental Unit is a community that is a "Colonia" within the meaning of the Colonias Infrastructure Act; and

WHEREAS, there exists within the boundaries of the Governmental Unit, Silver City, the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and

Turnerville located in Grant County, communities that have been designated as a “Colonia” within the meaning of the Colonias Infrastructure Act; and

WHEREAS, the Governmental Unit has applied to the Finance Authority for Colonias Infrastructure Project funding and has determined that it is in the best interest of the Governmental Unit that the Governmental Unit accepts the Grant to complete the Project for the benefit of Silver City, the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and Turnerville located in Grant County; and

WHEREAS, the Governmental Unit has determined that it is in the best interest of the Governmental Unit to enter into this Grant Agreement with the Finance Authority and accept the Grant in the amount of one hundred twenty eight thousand ninety nine dollar (\$128,099) from the Finance Authority to finance the acquisition of the Project, as more fully described in Exhibit “A” attached hereto; and

WHEREAS, the Governmental Unit is a Qualified Entity within the meaning of the Act and the Board Rules, and is qualified to receive the Grant pursuant to the Policies and the Act; 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 the Additional Funding Amount, is sufficient to complete the Project, and that it is in the best interest of the Governmental Unit and its residents 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 to accept the Grant Amount and to be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Governmental Unit acknowledges and understands that the Grant must be expended and a Qualified Project must be completed or the Governmental Unit will forfeit the ability to draw Grant funds from the Colonias Infrastructure Project Fund; and

WHEREAS, the Governing Body hereby determines that the Additional Funding Amount is now available to the Governmental Unit, or that the Governing Body will take such steps as are necessary to make the Additional Funding Amount available within six (6) months of the Closing Date; and

WHEREAS, the Governmental Unit acknowledges that, in the event that it is unable to provide the Additional Funding Amount within six (6) months after the Closing Date, the Grant Agreement shall, at the option of the CIB and the Finance Authority, terminate and be of no further force or effect, and that the Governmental Unit will forfeit the ability to draw Grant funds from the Colonias Infrastructure Project Fund; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the 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; and

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

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

“Additional Funding Amount” or “Local Match” means the amount to be provided, either as a hard match consisting of loans from persons or agencies other than the CIB, local cash contributions, private donations or federal funds, or as a soft match consisting of labor and/or equipment donated towards the Project at fair market rates determined locally within the State. The value of the Local Match is at least 10% of the Grant Amount and shall be provided from re-charge credits water rights and in-kind services of technical support.

“Authorized Officers” means any one or more of the Mayor, Mayor Pro Tem, the Clerk of the Governing Body and the Town Manager of the Governmental Unit.

“Board,” “Colonias Infrastructure Board,” or “CIB” means the Colonias Infrastructure Board created by the Act.

“Board Rules” or “Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, 2.91.2.1 through 2.91.2.18 NMAC.

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

“Colonia” means a Colonia as defined in the Act, and more particularly in NMSA 1978, §6-30-3 (2012 as amended through 2012).

“Colonias Infrastructure Act” means NMSA 1978, §6-30-1 through §6-30-8 (2012 as amended through 2012).

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

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Act” means the New Mexico Finance Authority Act, NMSA 1978, §6-21-1 through §6-21-31 (2005 as amended through 2012).

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

“Governmental Unit” means Silver City, Grant County, New Mexico.

“Grant” or “Grant Amount” means the amount provided to the Governmental Unit pursuant to the Grant Agreement for the purpose of funding the Project, and is one hundred twenty eight thousand ninety nine dollar (\$128,099).

“Grant Account” means the account in the name of the Governmental Unit established pursuant to the Grant Agreement and held by the Finance Authority for deposit of the Grant Amount, and for disbursement to the Governmental Unit for payment of the costs of the Project.

“Grant Agreement” means the grant agreement dated December 11, 2012 and any amendments or supplements hereto, including the Exhibits attached hereto.

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

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

“Policies” means the Colonias Infrastructure Board Colonias Infrastructure Project Fund Project Selection and Management Policies adopted by the Finance Authority on January 13, 2012.

“Project” means the preparation of the Qualified Project, as more particularly described in Exhibit “A” attached to the Grant Agreement.

“Qualified Entity” means a county, municipality or other entity recognized as a political subdivision of the state.

“Qualified Project” means a capital outlay project that is primarily intended to develop Colonias Infrastructure and may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means this Resolution adopted on December 11, 2012 as supplemented from time to time.

“State” means the State of New Mexico.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Governmental Unit and officers of the Governmental Unit, 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 Colonia and its residents.

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

- A. The Project is needed to meet the needs of the Colonia and its residents
- B. The costs of the Project are beyond the local control and resources of the Governmental Unit and the Colonia.
- 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 Governmental Unit and Colonia.
- D. The Governmental Unit will acquire the Project with the proceeds of the Grant and the Additional Funding Amount, and will utilize the Project for the purposes set forth in the Grant Agreement.
- E. The Additional Funding Amount is legally available to be applied to the Project.
- F. It is economically feasible and prudent to defray the costs of the Project by the execution and delivery of the Grant Agreement.

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 Governmental Unit and by the other qualifying entities involved in the Project and performing the Project, it is hereby declared necessary that the Governmental Unit execute and deliver the Grant Agreement evidencing the Governmental Unit’s acceptance of the Grant Amount of one hundred and twenty eight thousand ninety nine dollars (\$128,099) and the availability of the Additional Funding Amount in the amount of at least 10% of the grant amount 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 Governmental Unit shall use the proceeds of the Grant and the Additional Funding Amount to finance the acquisition of the Project. The Project will be owned by the Governmental Unit and will be utilized by the Governmental Unit 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 one hundred and twenty eight thousand ninety nine dollars (\$128,099.)

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 Governmental Unit's Clerk is hereby authorized to affix the seal of the Governmental Unit 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 Governmental Unit 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. The Governmental Unit shall proceed to acquire and complete the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit 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 Finance Authority.

C. Finance Authority Not Responsible. The Finance Authority shall in no manner be responsible for the application or disposal by the Governmental Unit or by the officers of the Governmental Unit of the funds derived from the Grant Agreement or of any other funds held by or made available to the Governmental Unit's in connection with the acquisition and 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 Governmental Unit 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 Governmental Unit 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 Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and Clerk of the Governmental Unit, 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.

[Remainder of page intentionally left blank.]

Section 14. Execution of Agreements. Silver City, New Mexico 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 11th DAY OF DECEMBER, 2012.

SILVER CITY, NEW MEXICO

By /s/ _____
James R. Marshall, Mayor

ATTEST:

/s/

Ann L. Mackie, Clerk

[Remainder of page intentionally left blank.]

SILVER CITY, NEW MEXICO

/s/

By _____
James R. Marshall, Mayor

ATTEST:

/s/

Ann L. Mackie, Clerk

[Remainder of page intentionally left blank.]

EXHIBIT "A"

Notice of Meeting

LEGAL NOTICE

The Town of Silver City will hold Public Hearings during its regular meeting on Tuesday, December 11, 2012, at 6:00 p.m. at the Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico. The public is invited to attend. The agenda will include:

Approval of Minutes: Nov. 27, 2012 Regular Council Meeting

Public Hearings:

A. Continued Public Hearing from the Nov. 13, 2012 Regular Council Meeting - Approval / Disapproval of Resolution No. 2012-27: Metropolitan Redevelopment Area Designation; making certain findings and determinations pursuant to the Metropolitan Redevelopment Code; and designating the Silver City Downtown Metropolitan Redevelopment Area.

B. Approval / Disapproval of Appeal #AP 12-01: an Appeal of the Community Development Director's interpretation of the Municipal Code, Section 48-22, relating to a request by Bruce McKinney to exchange Town-owned property for parcels in Rio Vicente Subdivision.

New Business:

A. Approval / Disapproval of Resolution No. 2012-30: authorizing the execution and delivery of a Colonias Infrastructure Project Fund Grant Agreement.

B. Approval / Disapproval of Bid #12/13-7: Home Rehabilitation Project.

C. Appointment to the Planning and Zoning Commission.

D. Appointment to the Mayor's Climate Protection Agreement Citizens Advisory Committee.

E. Approval / Disapproval to cancel or re-schedule the regular Council Meeting scheduled for Dec. 25, 2012.

Adjournment

If you have any questions regarding the public hearings, the files may be reviewed at the Community Development Department during regular business hours (Monday-Friday, 8:00 a.m. to 5:00 p.m.), located on the second floor of the Bank of America/City Hall Annex Building at 1203 N. Hudson Street, or call 534-6374. Agendas are available prior to the meeting and may be obtained at City Hall, 101 W. Broadway and City Hall Annex, 1203 North Hudson, or on the Town's website, www.townofsilvercity.org. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid service to attend or participate in the hearing or meeting, contact the Town Clerk at 534-6346 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact The Town Clerk if summary or other type of accessible format is needed.

\$128,099

**COLONIAS INFRASTRUCTURE PROJECT FUND
GRANT AGREEMENT**

Dated

December 11, 2012

AMONG

**THE COLONIAS INFRASTRUCTURE BOARD,
THE NEW MEXICO FINANCE AUTHORITY**

And

SILVER CITY, NEW MEXICO

GRANT AGREEMENT

THIS GRANT AGREEMENT, dated **December 11, 2012**, is entered into among the **COLONIAS INFRASTRUCTURE BOARD** (the “CIB”) and **THE NEW MEXICO FINANCE AUTHORITY** (the “Finance Authority”) (collectively, the “Grantors”), and **SILVER CITY**, in Grant County, New Mexico, (the “Governmental Unit”) for the benefit of itself, the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and Turnerville located in Grant County.

WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State of New Mexico 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 (2005 as amended through 2012), (the “New Mexico Finance Authority Act.”); and

WHEREAS, the CIB is a public body duly organized and created under and pursuant to the laws of the State, particularly the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, (2012 as amended through 2012) (the “Colonias Infrastructure Act”); and

WHEREAS, the Governmental Unit is a legally and regularly created, established organized and existing Municipality under the general laws of the State of New Mexico particularly, NMSA 1978, §§ 3-1-1 through 3-1-6 (2010 as amended through 2012) (the “Municipal Code”); and

WHEREAS, the Governmental Unit is a Qualified Entity to receive the Grant pursuant to the Rules and the Colonias Infrastructure Act; and

WHEREAS, the Governmental Unit is a community that is a “Colonia” within the meaning of the Colonias Infrastructure Act; and

WHEREAS, there exists within the boundaries of the Governmental Unit, Silver City, the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and Turnerville located in Grant County, communities that have been designated as a “Colonia” within the meaning of the Colonias Infrastructure Act; and

WHEREAS, the Governmental Unit will be receiving the Grant for the benefit of itself, the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and Turnerville located in Grant County; and

WHEREAS, the Governmental Unit has applied to the CIB and Finance Authority for Colonias Infrastructure Project funding, and has determined that it is in the best interest of the Governmental Unit that the Governmental Unit accepts the Grant to complete the Project for the benefit of itself, the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and Turnerville located in Grant County; and

WHEREAS, the Governmental Unit has determined that it is in the best interest of the Governmental Unit and the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and Turnerville located in Grant County to enter into this Grant Agreement with the Finance Authority and the CIB and to accept a grant in the amount of one hundred and twenty eight thousand and ninety nine dollars from the Finance Authority to finance the acquisition of the Project, as more fully described in Exhibit "A" attached hereto; and

WHEREAS, the Governmental Unit shall report at least quarterly to the Finance Authority on the status of the Project; and

WHEREAS, the Governmental Unit 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):

“Additional Funding Amount” or “Local Match” means the amount to be provided, either as a hard match consisting of loans from persons or agencies other than the CIB, local cash contributions, private donations or federal funds, or as a soft match consisting of labor and/or equipment donated towards the Project at fair market rates determined locally within the State. The value of the Local Match is at least 10% of the Grant Amount and shall be provided from re-charge credits water rights and in-kind services of technical support.

“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 Governmental Unit the Mayor, Mayor Pro Tem, the Clerk of the Governing Body and the Town Manager, 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 by an Authorized Officer.

“Board,” “Colonias Infrastructure Board,” or “CIB” means the Colonias Infrastructure Board created by the Act.

“Board Rules” or “Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, 2.91.2.1 through 2.91.2.18 NMAC.

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

“Colonia” means a Colonia as defined in the Colonias Infrastructure Act and more particularly in NMSA 1978, Section 6-30-3, and particularly Silver City, the City of Bayard, the Town of Hurley, the Village of Santa Clara, the unincorporated areas of Rosedale, Pinos Altos, Arenas Valley, North Hurley, Fierro, Hanover, Vanadium, and Turnerville located in Grant County

“Colonias Infrastructure Act” means NMSA 1978, §6-30-1 through §6-30-8 (2012 as amended through 2012).

“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.

“Finance Authority Act” means the New Mexico Finance Authority Act, NMSA 1978, §6-21-1 through §6-21-31 (2005 as amended through 2012).

“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 Town Council of the Governmental Unit, or any future governing body of the Governmental Unit.

“Governmental Unit ” means Silver City, Grant County, New Mexico.

“Grant” or “Grant Amount” means the amount provided to the Governmental Unit pursuant to the Grant Agreement for the purpose of funding the Project, and is one hundred and twenty eight thousand ninety-nine dollars (\$128,099).

“Grant Account” means the account in the name of the Governmental Unit established pursuant to this Grant Agreement and held by the Finance Authority for deposit of the Grant Amount, and for disbursement to the Governmental Unit 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.

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

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

“Policies” means the Colonias Infrastructure Board Colonias Infrastructure Project Fund Project Selection and Management Policies, adopted by the Finance Authority on January 13, 2012.

“Project” means the project described in Exhibit “A” hereto.

“Qualified Entity,” means a county, municipality or other entity recognized as a political sub-division of the state.

“Qualified Project” means a capital outlay project that is primarily intended to develop Colonias Infrastructure and may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means the Governmental Unit ’s Resolution No. 2012-30 adopted on December 11, 2012, authorizing the Governmental Unit ’s acceptance of the terms and conditions of this Grant Agreement.

“State” means the state of New Mexico.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

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

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Grant Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and 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 Governmental Unit by the provisions of this Grant Agreement and the

Resolution shall be exercised or performed by the Governmental Unit or by such residents, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Grant Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer 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 Governmental Unit is a legally and regularly created, established organized and existing Municipality under the general laws of the State of New Mexico particularly, NMSA 1978, §§ 3-1-1 through 3-1-6 (2010 as amended through 2012); and the Governmental Unit is authorized to enter into the transactions contemplated by this Grant Agreement and to carry out its obligations hereunder. The Governmental Unit 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 Governmental Unit 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 any and all applicable laws, relating to the Project. The Governmental Unit shall immediately apply all Grant proceeds disbursed to it toward the Project.

(e) Completion of Project. The Project will consist of the development of a regional preliminary engineering report for a regional water system, and will be completed so as to comply with all applicable federal, state and local laws, rules, ordinances and regulations relating to the acquisition and completion of the Project and to the use of the Grant proceeds. If requested by the Finance Authority, the Governmental Unit will allow the Office of the State Engineer, the New Mexico Environment Department or other appropriate agency of the State, to assist with completion of the Project and to review the Project as completed to assure compliance with all applicable federal, state and local laws, rules and regulations. The completed Project must be in a form acceptable to and approved by the Finance Authority, in its sole discretion.

(f) 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 Governmental Unit and is in the best interest of the Governmental Unit and the Colonia and their residents.

(g) Legal, Valid and Binding Obligation. The Governmental Unit 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 Governmental Unit enforceable in accordance with its terms.

(h) Benefit to Governmental Unit. The Project will at all times be used for the purpose of benefiting the Governmental Unit and in particular the Colonia.

(i) Grant Amount Does Not Exceed Project Cost. The Grant Amount plus the local match as provided herein does not exceed the cost of the Project.

(j) 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 Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(k) 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.

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

(m) 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 Governmental Unit hereunder.

(n) Governmental Unit's Existence. The Governmental Unit 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 Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(o) Reports to Finance Authority. The Governmental Unit shall report at least quarterly to the Finance Authority on the status of the Project pursuant to the Policies.

(p) Additional Funding Amount. The Additional Funding Amount is legally available for the Project and will be applied by Governmental Unit solely for the purposes of the Project.

Section 2.2. Representations, Warranties and Covenants of the Finance Authority and CIB. The Finance Authority and CIB represent warrant and covenant as follows:

(a) The Finance Authority and CIB have all necessary power and authority to enter into and perform and observe the covenants and agreements on their part contained in this Grant Agreement and, by proper action, have duly authorized the execution and delivery of this Grant Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of the Finance Authority and CIB 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 Governmental Unit is unable to proceed with the Project for the foreseeable future, (b) the Governmental Unit has failed to commence the Project in a reasonably timely manner, (c) 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 (d) Governmental Unit has expended all funds.

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 Governmental Unit, as needed by the Governmental Unit to acquire and complete the Project.

ARTICLE V: GRANT TO THE GOVERNMENTAL UNIT

Section 5.1. Grant to the Governmental Unit. The Finance Authority hereby grants to the Governmental Unit and the Governmental Unit hereby accepts from the Finance Authority an amount equal to the Grant Amount. The Finance Authority shall establish and maintain, on behalf of the Governmental Unit, the Grant Account, which Grant Account shall be kept separate and apart from all other accounts of the Finance Authority. Funds in the Grant Account shall be disbursed as provided in Section 6.2 hereof.

Section 5.3. Investment of Moneys in Grant Account. The Finance Authority may invest money on deposit in the Grant Account for the credit of the Colonias Infrastructure Project Fund

ARTICLE VI: THE PROJECT

Section 6.1. Agreement to Acquire and Complete the Project. The Governmental Unit 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, and efficiently.

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 to the Governmental Unit, 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 Governmental Unit, supported by certification of the Governmental Unit’s project architect, engineer, or other such authorized representative of the Governmental Unit acceptable to the Finance Authority that the amount of the disbursement request represents payment for the completion, acquisition or other Project related activities accomplished as of the date of the disbursement request. The Governmental Unit 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 Governmental Unit ’s disbursement requests made hereunder.

Section 6.3. Reimbursement for Prior Expenditures. The Finance Authority, so long as no Event of Default shall occur and upon presentation of the Governmental Unit ’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 within one-hundred fifty (150) days prior to the Closing Date.

Section 6.4. Completion of Disbursement of Grant Funds. Upon completion of disbursement of the Grant Amount, an Authorized Officer of the Governmental Unit 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 Grant Amount has been disbursed in accordance with the terms of this Grant Agreement.

ARTICLE VII: COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

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

Section 7.2. Finance Authority and Governmental Unit Representatives. Whenever under the provisions of this Grant Agreement the approval of the Finance Authority, the CIB, or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority, the CIB or the Governmental Unit, 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 Governmental Unit shall observe and comply promptly with all current and future orders of all federal and State

courts and federal and State agencies having jurisdiction over the Project and matters related to the Project.

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

The Finance Authority and CIB shall not be responsible for any act or omission of the Governmental Unit 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 Governmental Unit shall and hereby agrees to indemnify and save harmless the Finance Authority and CIB and their Authorized Officers or other designee, if any, from all claims by or on behalf of any person, firm, corporation or other legal entities 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 and CIB or its designee, Governmental Unit shall defend the Finance Authority and CIB and their designees, 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 Governmental Unit for purposes other than the Project;

(b) Failure by the Governmental Unit 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 Governmental Unit 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 Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of Force Majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph during the continuance of such inability (but Force Majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit 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 Governmental Unit in this Grant Agreement:

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

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

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

Section 9.3 Limitations on Remedies. A judgment requiring repayment of money entered against the Governmental Unit may reach any available funds of the Governmental Unit 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 Governmental Unit 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 Governmental Unit, then to:

Silver City, New Mexico
Attn.: Mayor
PO Box 1188
Silver City, New Mexico 88062

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 Governmental Unit 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 CIB, and the Governmental Unit 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, CIB, and the Governmental Unit. The Authorized Officers may execute amendments.

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, CIB, or against any officer, employee, director or member of the Governmental Unit, 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 Governmental Unit or of the Finance Authority or CIB, is hereby expressly waived and released by the Governmental Unit and by the Finance Authority and CIB as a condition of and in consideration for the execution of this Agreement.

Section 10.5. Governmental Unit Compliance. The Finance Authority shall not be responsible for assuring the Governmental Unit 's use of the Grant Amount or the Project for these intended purposes and shall have no obligation to monitor compliance by the Governmental Unit with the provisions of this Grant Agreement.

Section 10.6. Severability. In the event that any court of competent jurisdiction shall hold any provision of this Grant Agreement invalid or unenforceable, 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 CIB on June 8, 2012, has executed this Grant Agreement in its corporate name with its corporate seal hereunto affixed and attested by its duly Authorized Officers; and the Governmental Unit has caused this Grant Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly Authorized Officers. All of the above are effective as of the date first above written.

GRANTORS:

NEW MEXICO FINANCE AUTHORITY

By _____
Chief Executive Officer or Designee

ATTEST:

By _____

COLONIAS INFRASTRUCTURE BOARD

By _____
Chairperson or Vice-Chairperson

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

The Barnett Law Firm, P.A.

By _____
Christopher P. Collins
The Barnett Law Firm
As Grant Counsel On Behalf Of Virtue Najjar & Brown PC

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

By _____
Daniel C. Opperman, General Counsel

EXHIBIT “A”

TERM SHEET

Governmental Unit: Silver City, New Mexico

Project Description: Completion of a Qualified Project consisting of the development of a regional preliminary engineering report for a regional water system for the benefit of established, organized and existing Colonia as defined under NMSA 1978, §6-30-3 (2012 as amended through 2012), (the “Colonias Infrastructure Act”),

Total Grant Amount: One hundred and twenty eight thousand ninety nine dollars (\$128,099)

Additional Funding Amount: The value of the Local Match is at least 10% of the Grant Amount and shall be provided from re-charge credits water rights and in-kind services of technical support.

Closing Date: December 11, 2012

EXHIBIT "B"
FORM OF REQUISITION

RE: One hundred twenty eight thousand ninety nine dollar (\$128,099) Grant Agreement by and between Finance Authority, the CIB, and Silver City, New Mexico, Finance Authority Grant Number 2787-CIF(the "Grant Agreement")

Closing Date: December 11, 2012

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:

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

WIRING INFORMATION

BANK NAME:	
ACCOUNT NUMBER:	
ROUTING NUMBER:	

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 Silver City, New Mexico, 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 Silver City, New Mexico. All representations contained in the Grant Agreement and the related closing documents remain true and correct and Silver City, New Mexico 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 Governmental Unit

Title: _____

B-1

EXHIBIT "C"

FORM OF CERTIFICATE OF COMPLETION

RE: One hundred twenty eight thousand ninety nine dollar (\$128,099) Grant Agreement (the "Grant Agreement") by and between the New Mexico Finance Authority("Finance Authority"), the Colonias Infrastructure Board (the "CIB") and Silver City, New Mexico ("Governmental Unit"), Finance Authority Grant Number 2787-CIF

Closing Date: December 11, 2012

TO: NEW MEXICO FINANCE AUTHORITY

I, _____, the _____ of
[Name] [Title or position]

The Governmental Unit, hereby certify as follows:

1. The project described in the Grant Agreement (the "Project") was completed and placed in service by the Governmental Unit 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.

TOWN OF SIVER CITY, NEW MEXICO

By: _____

Its: _____

6. The Resolution and the Grant Agreement have been duly signed and adopted in accordance with all applicable laws and neither has been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Resolution. The Resolution constitutes valid and sufficient legal authority for the Governmental Unit to carry out and enforce the provisions of the Grant Agreement.

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

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

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

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

11. Neither the Governmental Unit 's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Grant Agreement conflicts or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under any law, court decree or order, governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound.

12. There is no actual or threatened action, suit, proceeding, inquiry or investigation against the Governmental Unit, at law or in equity, by or before any court, public board or body, nor to the Governmental Unit 's knowledge is there any basis therefore, affecting the existence of the Governmental Unit or the titles of its officials to their respective offices, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Governmental Unit, (b) the use of the proceeds of the Grant Agreement for the Project, (c) the validity or enforceability of the Grant Agreement or any proceedings of the Governmental Unit with respect to the Grant Agreement or the Resolution, (d) the execution and delivery of the Grant Agreement or (e) the power of the Governmental Unit to carry out the transactions contemplated by the Grant Agreement or the Resolution.

13. From at least September 1, 2012, to and including the date of this Certificate, the following were and now are the duly chosen and qualified acting officers and members of the Governing Body of the Governmental Unit:

Mayor:	James R. Marshall
Members and Officer's of Governing Body:	Cynthia Ann Bettison Pauline N. Hassler-Cook Jose A. Ray, Jr. Michael S. Morones
Town Manager:	Alex C. Brown
Clerk:	Ann L. Mackie

14. To the best of our knowledge and belief after due investigation, none of the Events of Default referred to in Article IX of the Grant Agreement has occurred.

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

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

17. Regular meetings of the Governmental Unit 's Governing Body and the meeting at which the Resolution was adopted have been held at the Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico, the principal meeting place of the Governmental Unit.

18. The Governmental Unit 's Governing Body has no rules of procedure, which would invalidate or make ineffective the Resolution or other action taken by the Governmental Unit 's Governing Body in connection with the Grant Agreement. The Open Meetings Act Resolution adopted and approved by the Governing Body establishes notice standards as required by Section 10-15-1, NMSA 1978, as amended and supplemented. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Grant Agreement and Resolution was taken at meetings held in compliance with the Open Meetings Act Resolution then in effect.

19. The Mayor and the Clerk, on the date of the signing of the Grant Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Governmental Unit authorized to execute the Grant Agreement.

20. This Certificate is for the benefit of the Finance Authority and the CIB.

21. This Certificate may be executed in counterparts.

WITNESS our signatures and the seal of the Governmental Unit this 11th day of December, 2012.

SILVER CITY, NEW MEXICO

/s/

By _____
James R. Marshall, Mayor

ATTEST:

/s/

Ann L. Mackie, Clerk