

**STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT**

NO: D-307-CV-2025-02766

Martin, James T.

**EMPOWERMENT CONGRESS OF
DOÑA ANA COUNTY,
JOSÉ SALDAÑA JR., and
VIVIAN FULLER**

Petitioners/Plaintiffs,

v.

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOÑA ANA**

Respondent/Defendant.

**PETITION FOR WRIT OF CERTIORARI OR IN THE ALTERNATIVE
COMPLAINT FOR DECLARATORY JUDGMENT**

INTRODUCTION

Empowerment Congress of Doña Ana County; José Saldaña Jr., resident of Sunland Park; and Vivian Fuller, resident of Santa Teresa (hereinafter, “Petitioners/Plaintiffs”), by and through undersigned counsel, hereby respectfully submit to this Court a Petition for Writ of Certiorari (hereinafter, “Petition”), or in the alternative, a Complaint for Declaratory Judgment (hereinafter, “Complaint”) seeking the Court’s review of Doña Ana County Ordinance No. 367-2025, (“IRB Ordinance”), Ordinance No. 368-2025, (“LEDA Ordinance 1”) and Ordinance No. 369-2025, (“LEDA Ordinance 2”), (collectively, “Ordinances”). In support of this Petition and Complaint, Petitioners/Plaintiffs state:

I. PETITION FOR WRIT OF CERTIORARI

Writs of certiorari are proper whenever it is shown that the inferior tribunal has proceeded illegally and no appeal is allowed or other mode provided for reviewing its

proceedings. *See Albuquerque Nat'l Bank v. Second Judicial Dist. Court*, 1967-NMSC-068, ¶ 3, 77 N.M. 603, 426 P.2d 204 (1967). Explained below, Petitioners are not provided any avenue for appeal of the Doña Ana County Board of County Commissioners' ("Board") decision to approve the Ordinances. Petitioners seek review of the Board's decision pursuant to Rule 1-075 NMRA as it is contrary to law and respectfully request this Court vacate the Board's decision adopting the Ordinances.

JURISDICTION

1. Article VI, Section 13 of the New Mexico Constitution, grants the district court original jurisdiction in all matters and causes not excepted in the Constitution, and such jurisdiction of special cases and proceedings as may be conferred by law, and appellate jurisdiction of all cases originating in inferior courts and tribunals in their respective districts. The district courts also have the power to issue writs, including writs of certiorari, in exercise of their jurisdiction. *See also Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 12, 142 N.M. 786, 171 P.3d 300.
2. Petitioners seek review of the Board's final decision to adopt Ordinance No. 367-2025 and Ordinance No. 368-2025 on September 19, 2025, and to adopt Ordinance No. 369-2025 on October 14, 2025. (*A copy of Ordinance No. 367-2025 is attached hereto as Exhibit 1; a copy of Ordinance No. 368-2025 is attached hereto as Exhibit 2; a copy of Ordinance No. 369-2025 is attached hereto as Exhibit 3*).
3. Petitioners are not afforded any statutory right to appeal the Board's decision to adopt the Ordinances. *See Doña Ana County Code* §§ 56-1 *et seq.*; *see also NMSA 1978* §§ 3-32-1 *et seq.*
4. Rule 1-075(A) NMRA governs writs of certiorari to administrative officers and agencies pursuant to the New Mexico Constitution when there is no statutory right to an appeal or other statutory right of review.

5. This Petition is being filed within 30 days of the final decision of the Board to adopt the September 19, 2025, Ordinances, and the final decision of the Board to adopt the October 14, 2025, Ordinance. Rule 1-075(D) NMRA.

6. Thus, jurisdiction is proper in the Third Judicial District pursuant to Art. VI, Section 13 of the Constitution of the State of New Mexico, Rule 1-075 NMRA, and NMSA 1978 § 38-3-1.

VENUE

7. Venue is proper in this Court pursuant to NMSA 1978 § 38-3-1(A) and NMSA 1978 § 38-3-2.

8. The events described in this Petition occurred in Doña Ana County.

9. Respondent is a governing body within Doña Ana County.

10. Petitioners are residents of and organizations that work within Doña Ana County.

STATEMENT OF FACTS

A. The Parties

11. Empowerment Congress of Doña Ana County is a nonprofit organization located in Doña Ana County that provides services to residents in Doña Ana County, New Mexico.

Empowerment Congress has worked in Sunland Park, Santa Teresa, and Doña Ana County since early 2018, focusing on flood mitigation efforts in Anapra; running a health program for Doña Ana County that includes hosting vaccine clinics, diabetes education and resources, mental health education, and resource connection for community members; community advocacy and connections with the City of Sunland Park and Doña Ana County government; and youth workshops at Santa Teresa High School. Empowerment Congress also engages in and leads community-led advocacy for clean and safe drinking water in Sunland Park and Santa Teresa, which includes promoting environmental awareness and public health; public education

programs; local, state, and federal advocacy and policy-work, and grassroots services with Sunland Park and Santa Teresa community members.

12. Representatives of Empowerment Congress participated at the September 19 hearing by submitting formal written comments to the Board objecting to the Board's consideration and adoption of the IRB Ordinance and LEDA Ordinance 1. Representatives of Empowerment Congress also gave verbal public comment at the September 19 hearing concerning the IRB Ordinance and LEDA Ordinance 1. Representatives of Empowerment Congress also participated at the October 14 hearing by giving verbal public comment on LEDA Ordinance 2.

13. José Saldaña Jr. resides in Doña Ana County, New Mexico. Mr. Saldaña Jr. is also a volunteer with Empowerment Congress of Doña Ana County.

14. Mr. Saldaña Jr. participated at the September 19 hearing by submitting formal written comments to the Board objecting to the Board's consideration and adoption of the IRB Ordinance and LEDA Ordinance 1. Mr. Saldaña Jr. also gave verbal public comment at the September 19 hearing concerning the IRB Ordinance and LEDA Ordinance 1.

15. Vivian Fuller resides in Doña Ana County, New Mexico. Ms. Fuller is also an employee of Empowerment Congress of Doña Ana County, as a Community Program Manager.

16. Ms. Fuller participated at the September 19 hearing by submitting formal written comments to the Board objecting to the Board's consideration and adoption of the IRB Ordinance and LEDA Ordinance 1. Ms. Fuller also gave verbal public comment at the September 19 hearing. Ms. Fuller also participated at the October 14 hearing by providing verbal public comment related to LEDA Ordinance 2.

17. The Board is a local governing body that operates within the jurisdiction of Doña Ana County and sets policy for the governance of Doña Ana County, including determining the rules by which it issues funding to project applicants. *See* Doña Ana County Code §§ 56-1 *et seq.*

B. Background Information

18. “Project Jupiter” is a proposed development in Santa Teresa, New Mexico, that will comprise of, upon information and belief,¹ at least four data centers, micro-grid facilities, natural gas power plants, a battery storage center and a desalination plant.

19. The proposed development is anticipated, upon information and belief, to cover at least 1,400 acres. Upon information and belief, the proposed development will be sited within at least two miles of residences, if not closer, and within three miles of Santa Teresa High School.

20. Construction of Project Jupiter is proposed to take at least two years and following the completion of construction, the proposed development’s facilities will operate 24 hours a day, 7 days a week, 365 days a year.

21. Once in operation, the proposed development will draw significant amounts of water from the public water supply, as well as emit significant concentrations of several air pollutants

¹ Petitioners note that, to date, it remains unclear what facilities are included within Project Jupiter because the project applicants continue to issue conflicting and unclear statements on what facilities and power sources the proposed development will include. For example, Project Jupiter applicants at one point stated it would rely upon nuclear small modular reactors to power its microgrid, but now say it will rely upon natural gas power plants. Similarly, Project Jupiter applicants have issued conflicting materials and statements that the proposed development would include a desalination plant, but would also not include a desalination plant. *See* BorderPlex Digital Assets, LLC, Presentation to the New Mexico Legislative Finance Committee (August 19, 2025) [Accessible here: <https://www.nmlegis.gov/handouts/ALFC%20081925%20Item%204%20BorderPlex%20Digital%20Assets%20Presentation.pdf>]; *see* Project applicants’ Project Jupiter website [Accessible here: <https://projectjupitertogether.com/>]; *see* Memorandum of Understanding between BorderPlex Digital Assets, LLC, and New Mexico Governor Michelle Lujan-Grisham (February 2025) [Accessible here: <https://edd.newmexico.gov/wp-content/uploads/2025/02/BorderPlex-Memorandum-of-Understanding-final.pdf>]; *see also* Exhibits 1 and 2 for Project Jupiter’s project description.

and toxins, jeopardizing the public health. Based on the recent public notice for two air quality permit applications for the construction of Project Jupiter’s microgrid facilities, published in the Las Cruces Sun News on October 10, 2025, (*attached hereto as Exhibit 4*), the proposed development stands to emit at least 436.87 tons of Particulate Matter (“PM”) 10; 436.87 tons of PM 2.5; 64.74 tons of Sulfur Dioxide (“SO₂”); 498.77 tons of Nitrogen Oxides (“NO_x”); 494.26 tons of Carbon Monoxide (“CO”); 195.76 tons of Volatile Organic Compounds (“VOC”); 43.81 tons of Hazardous Air Pollutants (“HAPs”); 273.07 tons of Ammonia (“NH₃”); and 46,560,414 tons of Greenhouse Gas Emissions – per year.

22. Petitioners note that these are proposed emissions for only the microgrid facilities for Project Jupiter, and do not include the proposed emissions for the four data centers, battery storage center, desalination plant, or other facilities anticipated to be included in the proposed development – meaning the total emissions, and associated adverse health impacts, are most likely to be significantly higher than just the emissions listed above.

23. Adverse health impacts from PM 2.5 and PM 10 exposure can include: heart disease; lung cancer; chronic obstructive pulmonary disease (“COPD”); lower-respiratory infections like pneumonia; strokes; type 2 diabetes; other respiratory diseases and illnesses; adverse birth outcomes, such as premature birth, low birth weight, infant and fetal mortality; and overall lower life expectancies in affected populations.² Adverse health impacts from SO₂ exposure can include: wheezing; shortness of breath and chest tightness; asthma; respiratory illnesses and diseases; and lung cancer.³ Adverse health impacts from NO_x exposure can include: increased

² See PM 2.5, State of Global Air, <https://www.stateofglobalair.org/pollution-sources/pm25> (last accessed October 16, 2025); see *Particle Pollution*, American Lung Association, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/particle-pollution> (last updated May 27, 2025).

³ See *Sulfur Dioxide*, American Lung Association, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/sulfur-dioxide> (last updated October 26, 2023).

inflammation of the airways; worsened cough and wheezing; reduced lung function; increased asthma attacks; increased asthma in children; cardiovascular disease; kidney harm; neurological harm; affected pregnancy and adverse birth outcomes; autoimmune disorders, and cancer.⁴

Adverse health impacts from CO exposure can include: neurological harm; cardiovascular harm and disease; exacerbation of pre-existing heart and lung disease; miscarriages and developmental delays in children.⁵ Adverse health impacts from VOC exposure can include: dizziness; fatigue; visual disorders; memory impairment; loss of coordination; skin and eye irritation; lung and breathing problems; headaches; damage to the liver, kidneys and central nervous system; and cancer.⁶ Adverse health impacts from HAPs exposure can include: damage to the immune system; harm to neurological, reproductive, developmental, respiratory systems; and cancer.⁷ Adverse health impacts from NH₃ exposure can include: respiratory irritation; eye, nose, and throat irritation; lung damage; and other respiratory complications.⁸

C. Nature of the Proceedings

1. September 19 Hearing

24. On August 15, 2025, unnamed companies (“Entity A,” “Entity B,” and “Entity C” in the IRB Application) submitted an application to Doña Ana County, titled “Project Jupiter Industrial

⁴ See *Nitrogen Dioxide*, American Lung Association, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/nitrogen-dioxide> (last updated October 26, 2023).

⁵ See *Public Health Statement for Carbon Monoxide*, Agency for Toxic Substances and Disease Registry, <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=1146&toxid=253> (last updated Dec. 13, 2012).

⁶ See Ketura Persellin, *What Are VOCs?*, Environmental Working Group (Sept. 11, 2023), <https://www.ewg.org/news-insights/news/2023/09/what-are-vocs>.

⁷ See *Health Effects Notebook for Hazardous Air Pollutants*, U.S. Environmental Protection Agency, <https://www.epa.gov/haps/health-effects-notebook-hazardous-air-pollutants> (last updated December 5, 2024).

⁸ See *Public Health Statement for Ammonia*, Agency for Toxic Substances and Disease Registry, <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=9&toxid=2> (last updated October 26, 2011).

Revenue Bond Application” (hereinafter, “IRB Application”) (*A copy of the Application is attached hereto as Exhibit 5*).

25. The unnamed companies did not submit a separate application for Local Economic Development Act (“LEDA”) funding.

26. On August 26, 2025, at a regular Board meeting, the Board voted 4-1 to hold a public hearing on September 19, 2025, to consider the adoption of two ordinances, one for the issuance of industrial revenue bonds (“IRBs”) and one for the issuance of LEDA funding, based on the single IRB Application.

27. On September 3, 2025, the County posted in the Las Cruces Sun News public notice of the Board’s intent to consider Ordinance No. 367-2025, for the issuance of IRBs, and Ordinance No. 368-2025, for the first issuance of LEDA funding.

28. On September 8, 2025, Petitioners submitted a formal written public comment to the Board regarding the incompleteness of the IRB Application, raising that the IRB Application lacked the information and supporting materials necessary for the County to make a fully informed decision on whether the issuance of the IRBs and LEDA funding is within the public’s interest and would not result in an unauthorized use of public funds and resources, as required by the Doña Ana County Code and state law (*A copy of Petitioners’ written comment is attached hereto as Exhibit 6*).

29. On September 19, 2025, the Board held a public hearing within a regular meeting to consider the adoption of the IRB Ordinance and LEDA Ordinance 1.

30. At the September 19 public hearing, Board Commissioner and Vice Chair Susana Chaparro revealed that the IRB Application contained hundreds of pages, noting that several

pages were missing or blank, and the Board had received these hundreds of pages to review only days before the September 19 Board public hearing and vote.

31. Moreover, at the September 19 public hearing, Board Commissioner and Vice Chair Chaparro, during discussions on adopting Ordinance No. 368-2025 for the issuance of LEDA funding for Project Jupiter, further stated the IRB Application, which the Board was also relying on to determine the issuance of LEDA funding, was missing documents and she “would require more information and have probably more questions, but at this point, I don’t have a complete picture on which to ask further questions.”

2. October 14 Hearing

32. On September 9, 2025, at a regular Board meeting, the Board voted 4-1 to hold a public hearing on October 14, 2025, to consider the adoption of an ordinance to issue additional LEDA funding for reduced permit fees for Project Jupiter.

33. On September 10, 2025, Petitioners submitted a New Mexico Inspection of Public Records Act Request, NMSA 1978 §§ 14-2-1 *et seq.*, for the October 14 LEDA Ordinance Application. The County responded with the same IRB Application submitted on August 15, 2025. (*See Exhibit 5*).

34. On September 14, 2025, the County posted in the Las Cruces Sun News public notice of the Board’s intent to consider Ordinance No. 369-2025 for the issuance of LEDA funding for reduced permit fees.

35. On October 14, 2025, the Board held a public hearing within a regular meeting to consider the adoption of LEDA Ordinance 2.

D. The Decisions at Issue

1. September 19 Hearing

36. On September 19, 2025, the Board voted 4-1 to adopt the IRB Ordinance, authorizing the issuance and sale of Doña Ana County, New Mexico, taxable industrial revenue bonds, in a maximum, aggregate principal amount up to \$165,000,000,000 to provide funds to the development of Project Jupiter, which is anticipated for use in the the acquisition, development, installation, construction and equipping of power generation, battery storage and a microgrid facility and four anticipated data center facilities, all of which to be located within the boundaries of Doña Ana County, New Mexico. Doña Ana County Ordinance No. 367-2025.

37. That same day, the Board voted 4-1 to adopt LEDA Ordinance 1, approving LEDA funding for Project Jupiter, authorizing the execution of a project participation agreement, and approving economic assistance for a portion of the costs of the acquisition, construction, and improvement of data center facilities to be located in Doña Ana County, New Mexico. Doña Ana County Ordinance No. 368-2025.

38. On September 22, 2025, the Doña Ana County Clerk recorded both the IRB Ordinance and LEDA Ordinance 1.

39. All enacted ordinances shall become effective 30 days from the date of recording by the County Clerk. Doña Ana County Code §1-13.B.

40. Accordingly, the IRB Ordinance, Ordinance No. 367-2025, and LEDA Ordinance 1, Ordinance No. 368-2025, become effective on October 22, 2025.

2. October 14 Hearing

41. On October 14, 2025, the Board voted 4-1 to adopt LEDA Ordinance 2, approving economic assistance to the companies for a portion of the costs, in the form of a reduction of

certain building permit fees, of the acquisition, construction, and improvement of a power generation, battery storage and microgrid facility, and four data center facilities to be located in Doña Ana County, New Mexico. Doña Ana County Ordinance No. 369-2025.

42. On October 15, 2025, the Doña Ana County Clerk recorded LEDA Ordinance 2.

43. All enacted ordinances shall become effective 30 days from the date of recording by the County Clerk. Doña Ana County Code §1-13.B.

44. Accordingly, LEDA Ordinance 2, Ordinance No. 369-2025 becomes effective on November 14, 2025.

CLAIMS FOR RELIEF

1. The Board's adoption of the IRB Ordinance, Ordinance No. 367-2025, is contrary to law.

45. The Doña Ana County Board of County Commissioners has the authority to issue IRBs to applicants. Doña Ana County Code §§ 56-1 *et seq.* and NMSA 1978 §§ 3-32-1 *et seq.*

46. Petitioners have a significant interest in their local governing body following its own rules, as well as state law. *See Concerned Residents for Neighborhood Inc. v. Shollenbarger*, 1991-NMCA-105, ¶ 15 ("...a petition for writ of certiorari acts as a check on the propriety of the division's actions with respect to license transfers"); *see also High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1994-NMCA-139, ¶ 31.

47. Moreover, the Board is bound by its own regulations. *See Navarez v. N.M. Dep't of Workforce Solutions*, 2013-NMCA-079, ¶ 15, 306 P.3d 513 ("An administrative agency is bound by its own regulations"); *N.M. State Racing Comm'n v. Yoakum*, 1991-NMCA-153, ¶ 17, 113 N.M. 561, 829 P.2d 7 (voiding a trainer's suspension for a positive lab test where the Commission's own rule was not followed).

48. The Board can issue IRBs “only after the County has been fully informed concerning the applicant and its current status and future plans,” necessitating that “the protection of the County's interests requires thorough investigation of any request for industrial revenue bonds.”

Doña Ana County Code §56-8.A.

49. The Board must consider and evaluate the following criteria when granting an application for an IRB: “(1) The extent to which the proposed project will create new or preserve existing employment opportunities within the community; (2) The extent to which the proposed project with industrial revenue bonds will increase the County's tax base compared to the extent to which the proposed project without industrial revenue bonds will increase the County's tax base; (3) The extent to which the proposed project will enhance and strengthen the County as a center of commerce, including, but not limited to, research, food processing, and manufacturing or distribution point location; and (4) The extent to which the proposed project will upgrade and improve structures, improve site accessibility and usefulness, and otherwise provide for the public health, safety and welfare.” Doña Ana County Code §56-8.D.

50. The Application the Board relied on to adopt the IRB Ordinance is incomplete and does not provide enough information, supporting materials, or evidence required for the Board to properly apply the four criteria and make a fully-informed decision, as required by the Doña Ana County Code.

51. The Board’s arbitrary adoption of the IRB Ordinance is contrary to law because the Board could not properly consider, evaluate, and apply the required criteria and ultimately, make a “fully informed” decision as required by the Doña Ana County Code based on an incomplete Application.

2. **The Board's adoption of LEDA Ordinance 1, Ordinance No. 368-2025, is contrary to law.**

52. Additionally, the Board has the authority to provide LEDA grants to qualifying entities for economic development projects. Doña Ana County Code §§ 166-1 *et seq.*, NMSA 1978 §§ 5-10-1, *et seq.*

53. The Board's decision to grant an entity's application for LEDA funding must be based on "the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application." NMSA 1978 § 5-10-9(B).

54. An applicant's proposal for LEDA funding must "describe the proposed project, including the names and addresses of persons with an interest in the project, the number and types of jobs to be created, wages and benefits associated with the jobs to be created, the type and amount of assistance sought from the County, and all other information requested by the County." Doña Ana County Code § 166-4.

55. Here, again, the Board is bound by its own regulations. *See Navarez v. N.M. Dep't of Workforce Solutions*, 2013-NMCA-079, ¶ 15, 306 P.3d 513 ("An administrative agency is bound by its own regulations"); *N.M. State Racing Comm'n v. Yoakum*, 1991-NMCA-153, ¶ 17, 113 N.M. 561, 829 P.2d 7 (voiding a trainer's suspension for a positive lab test where the Commission's own rule was not followed).

56. Pursuant to NMSA 1978 § 5-10-3(L), only "qualifying" entities can apply for and receive LEDA funding, such as entities that will manufacture, process, assemble, store, warehouse, distribute, or sell products; or are a tribal nation or pueblo; telecommunications sales enterprise;

farmers' market; metropolitan redevelopment project; cultural facility; or retail business. Non-qualifying entities under the Act include businesses in which all or part of the activities involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but not including businesses primarily engaged in the sale of goods or commodities at retail.⁹

57. The scope of the proposed project in the Application does not fall into any one of the nine qualifying categories under the Act, and the Project will be, apparently, primarily supplying its services to a specific industry and more broadly to the general public, establishing the Project as a non-qualifying entity under the Act.

58. The Board's adoption of LEDA Ordinance 1 is contrary to law because the proposed project is not a qualifying entity under the Act.

59. The Board arbitrarily considered the IRB Application as support for the adoption of LEDA Ordinance 1 when the IRB Application is not an application for LEDA funding. Even if the Board could consider the IRB Application as an application for LEDA funding, the Application was incomplete and did not satisfy the baseline requirements set forth by the Act and the Doña Ana County Code for LEDA applications and proposals.

60. The Board's arbitrary adoption of LEDA Ordinance 1 is contrary to law because the Board could not properly consider and evaluate the request for LEDA funding, as required by the Doña Ana County Code and the Act, based on the missing LEDA Application and incomplete IRB Application.

⁹ See *Local Economic Development Act (LEDA)*, New Mexico Economic Development Department, <https://edd.newmexico.gov/business-development/edd-programs-for-business/finance-development/leda/> (last accessed October 16, 2025).

3. **The Board's adoption of LEDA Ordinance 2, Ordinance No. 369-2025, is contrary to law.**

61. Petitioners incorporate Paragraphs 52-57 by reference herein.

62. The Board's adoption of LEDA Ordinance 2 is contrary to law because the proposed project is not a qualifying entity under the Act and the Board did not have enough information to properly consider and evaluate the request for LEDA funding, as required by the Doña Ana County Code and the Act.

63. Because the Board's adoption of the Ordinances is not in accordance with law, Doña Ana County Code §§ 56-1 *et seq.*, NMSA 1978 §§ 3-32-1 *et seq.*, Doña Ana County Code §§ 166-1 *et seq.*, and NMSA 1978 §§ 5-10-1, *et seq.*, and because the Board must follow its own regulations, Petitioners urge this Court to vacate the Board's decision to adopt the Ordinances.

RELIEF REQUESTED

64. Petitioners respectfully request that the Court issue a Writ of Certiorari to review the Board's actions in its adoption of Ordinance No. 367-2025, Ordinance No. 368-2026, and Ordinance No. 369-2025.

65. Petitioners respectfully request that the Court find that the Board erred in its adoption of the Ordinances and vacate the Board's decisions.

II. ALTERNATIVE COMPLAINT FOR DECLARATORY JUDGMENT

In the alternative, Plaintiffs, by and through undersigned counsel, respectfully submit to this Court a Complaint for Declaratory Judgment pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978 §§ 44-6-1 *et seq.*; *see* Doña Ana County Code §§ 56-1 *et seq.*; *see also* NMSA 1978 §§ 3-32-1 *et seq.* Plaintiffs seek declaratory relief preventing Defendant from implementing the Ordinances. In support of this Complaint, Plaintiffs incorporate the above statement of facts and further assert the following:

JURISDICTION

1. Jurisdiction is proper in this Court pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978 §§ 44-6-2 *et seq.* and NMSA 1978 §§ 4-46-1, *et seq.* Here the Court is reviewing the actions of Defendant, the Doña Ana County Board of County Commissioners, which is located in Las Cruces, New Mexico. Plaintiffs question the validity of Defendant's acts in adopting the Ordinances. *See Smith v. City of Santa Fe*, 2007-NMSC-055, ¶¶ 13,14, 142 N.M. 786, 171 P.3d 300 ("The [Declaratory Judgment Act] is a special proceeding that grants courts the power to declare rights, status and other legal relations whether or not further relief is or could be claimed ... [and] is intended to be liberally construed and administered as a remedial measure ... the Act grants jurisdiction to the district court to entertain an action for declaratory judgment to review municipal ordinances ... Thus the DJA is specifically designed to bring an action challenging the constitutionality or validity of local laws or ordinances").

STANDING

2. Plaintiffs have suffered an injury-in-fact directly caused by the actions of the Defendant, and this Court may redress this injury with a decision favorable to Plaintiffs.

3. Plaintiffs' injury is both actual and imminent because the Defendant has adopted two Ordinances, slated to go into effect on October 22, 2025, that would begin the use of public funds and resources for a proposed project, without adequate and necessary consideration of the proposed project's adverse impacts to the public health, safety, welfare, economic vitality, and quality of life.

4. Likewise, Defendant has adopted a separate Ordinance, slated to go into effect on November 14, 2025, that would similarly use public funds and resources for a proposed project,

without adequate and necessary consideration of the proposed project's adverse impacts to the public health, safety, welfare, economic vitality, and quality of life.

5. The Ordinances permit a proposed development to move forward that stands to significantly impact Plaintiffs' public water supply and availability of water; substantially and adversely impact Plaintiffs' air quality and health; likely increase dust and sandstorms due to the inappropriate and excessive development for the Project and the particular characteristics of the area's geology; and significantly increase the traffic, noise, and light pollution surrounding Plaintiffs' residences, overall detrimentally impacting Plaintiffs' quality of life.

RIPENESS

6. This controversy is ripe for decision under the Declaratory Judgement Act because the Plaintiffs are being directly and immediately harmed by the Defendant, as a local governing body, failing to abide by local and state law.

7. The hardship is imminent with two of the Ordinances slated to go into effect on October 22, 2025, and another Ordinance slated to go into effect on November 14, 2025, despite the Defendant's failure to follow local and state law.

8. Plaintiffs' injury will be redressed by a favorable decision vacating Defendant's adoption of the Ordinances.

9. The Application, which the Board relied upon for its decision to adopt the Ordinances, explicitly states, "[t]he location decision for Project Jupiter remains competitive and is contingent on securing the necessary IRB package proposed in this application," showing the proposed Project intends to move forward upon the Ordinances becoming effective. (*See Exhibit 5*).

VENUE

10. Venue is proper in this Court pursuant to NMSA 1978 § 38-3-1(A) and NMSA 1978 § 38-3-2.
11. The events described in this Complaint occurred in Doña Ana County.
12. Defendant is a governing body within Doña Ana County.
13. Plaintiffs are residents of and organizations that work within Doña Ana County.

CLAIMS FOR RELIEF

1. Defendant adopted the IRB Ordinance, Ordinance No. 367-2025, in violation of applicable law.

14. Defendant has the authority to issue industrial revenue bonds (“IRBs”) to applicants.

Doña Ana County Code §§ 56-1 *et seq.* and NMSA 1978 §§ 3-32-1 *et seq.*

15. Defendant can issue IRBs “only after the County has been fully informed concerning the applicant and its current status and future plans,” necessitating that “the protection of the County's interests requires thorough investigation of any request for industrial revenue bonds.”

Doña Ana County Code § 56-8.A.

16. Defendant must consider and evaluate the following criteria when granting applications for IRBs: “(1) The extent to which the proposed project will create new or preserve existing employment opportunities within the community; (2) The extent to which the proposed project with industrial revenue bonds will increase the County's tax base compared to the extent to which the proposed project without industrial revenue bonds will increase the County's tax base; (3) The extent to which the proposed project will enhance and strengthen the County as a center of commerce, including, but not limited to, research, food processing, and manufacturing or distribution point location; and (4) The extent to which the proposed project will upgrade and

improve structures, improve site accessibility and usefulness, and otherwise provide for the public health, safety and welfare.” Doña Ana County Code § 56-8.D.

17. The Application is incomplete and does not provide information, supporting materials, or evidence required for the Board to properly apply the four criteria and make a fully-informed decision, as required by the Doña Ana County Code.

18. Defendant’s arbitrary adoption of Ordinance No. 367-2025, for the issuance of IRBs, is contrary to law because based on the incomplete Application, the Board could not properly consider, evaluate, and apply the required criteria and ultimately, make a “fully informed” decision as required by the Doña Ana County Code.

2. Defendant adopted LEDA Ordinance 1, Ordinance No. 368-2025, in violation of applicable law.

19. Defendant’s decision to grant an entity’s application for LEDA funding must be based on “the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.” NMSA 1978 § 5-10-9(B).

20. An applicant’s proposal for LEDA funding must “describe the proposed project, including the names and addresses of persons with an interest in the project, the number and types of jobs to be created, wages and benefits associated with the jobs to be created, the type and amount of assistance sought from the County, and all other information requested by the County.” Doña Ana County Code § 166-4.

21. Pursuant to NMSA 1978 § 5-10-3(L), only “qualifying” entities can apply for and receive LEDA funding, such as entities that will manufacture, process, assemble, store, warehouse,

distribute, or sell products; or are a tribal nation or pueblo; telecommunications sales enterprise; farmers' market; metropolitan redevelopment project; cultural facility; or retail business. Non-qualifying entities under the Act include businesses in which all or part of the activities involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but not including businesses primarily engaged in the sale of goods or commodities at retail.¹⁰

22. The scope of the project described in the Application relied upon by Defendant, which, notably, is an application for IRBs and not an application for LEDA funding, does not fall into any one of the nine qualifying categories under the Act, as the project will be primarily supplying its services to a specific industry and broadly to the general public, establishing the project as a non-qualifying entity under the Act.

23. Defendant's adoption of LEDA Ordinance 1 is contrary to law because the proposed project is not a qualifying entity under the Act.

24. Defendant further arbitrarily considered the IRB Application for the adoption of LEDA Ordinance 1, when the application was not an application for LEDA funding. Even if the Board could consider the IRB Application for LEDA funding, the Application was incomplete and did not satisfy the baseline requirements set forth by the Act and the Doña Ana County Code for LEDA applications and proposals.

25. Defendant's arbitrary adoption of LEDA Ordinance 1 is contrary to law because based on the missing LEDA Application and incomplete IRB Application, the Board could not properly

¹⁰ See *Local Economic Development Act (LEDA)*, New Mexico Economic Development Department, <https://edd.newmexico.gov/business-development/edd-programs-for-business/finance-development/leda/> (last accessed October 16, 2025).

consider and evaluate the request for LEDA funding, as required by the Doña Ana County Code and the Act.

26. As such, Defendant violated its Code and the New Mexico Local Economic Development Act in adopting Ordinance No. 368-2025 to issue LEDA funding to a non-qualifying entity.

27. Moreover, Defendant violated its Code and the New Mexico Local Economic Development Act by adopting Ordinance No. 368-2025, to issue LEDA funding, by considering an incomplete application for IRBs.

3. Defendant adopted LEDA Ordinance 2, Ordinance No. 369-2025, in violation of applicable law.

28. Plaintiffs incorporate Paragraphs 19-22 by reference herein.

29. Defendant's arbitrary adoption of Ordinance No. 369-2025 is contrary to law because based on the missing LEDA Application and incomplete IRB Application, the Board could not properly consider and evaluate the request for LEDA funding, as required by the Doña Ana County Code and the Act.

30. As such, Defendant violated its Code and the New Mexico Local Economic Development Act in adopting Ordinance No. 369-2025 to issue LEDA funding to a non-qualifying entity.

31. Moreover, Defendant violated its Code and the New Mexico Local Economic Development Act by adopting LEDA Ordinance 2, Ordinance No. 369-2025, to issue LEDA funding for reduced permit fees, by considering an incomplete application for IRBs.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. Issuance of a declaratory judgment against Defendant finding that the Ordinances are invalid and contrary to law;
- B. An Order vacating the Ordinances adopted by the Defendant; and

C. Such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this 17th day of October, 2025, by:

NEW MEXICO ENVIRONMENTAL LAW CENTER

/s/ Kacey J. Hovden

Kacey J. Hovden

State Bar ID: 161219

Maslyn K. Locke

State Bar ID: 151635

P.O. Box 12931

Albuquerque, NM 87195

Tel.: (505) 989-9022

Fax.: (505) 629-4769

khovden@nmelc.org

mlocke@nmelc.org

Attorneys for Petitioners/Plaintiffs

EXHIBIT 1

DOÑA ANA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO 367-2025

AUTHORIZING THE ISSUANCE AND SALE OF DOÑA ANA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (PROJECT JUPITER) SERIES 2025A, SERIES 2025B AND SERIES 2025C, COLLECTIVELY IN A MAXIMUM, AGGREGATE PRINCIPAL AMOUNT UP TO \$165,000,000,000 (THE "BONDS"), WITH SERIES 2025A BEING IN THE MAXIMUM, AGGREGATE PRINCIPAL AMOUNT OF \$15,000,000,000, SERIES 2025B BEING IN A MAXIMUM, AGGREGATE PRINCIPAL AMOUNT OF UP TO \$25,000,000,000 AND CONSISTING OF FOUR ANTICIPATED SUBSERIES, AND SERIES 2025C BEING IN A MAXIMUM, AGGREGATE PRINCIPAL AMOUNT OF UP TO \$125,000,000,000 AND CONSISTING OF FOUR ANTICIPATED SUBSERIES TO PROVIDE FUNDS TO THE DEVELOPMENT OF PROJECT JUPITER, WHICH IS ANTICIPATED AS CONSISTING OF THE ACQUISITION, DEVELOPMENT, INSTALLATION, CONSTRUCTION AND EQUIPPING OF POWER GENERATION, BATTERY STORAGE AND A MICROGRID FACILITY, THE ACQUISITION, DEVELOPMENT, INSTALLATION, CONSTRUCTION AND EQUIPPING OF FOUR ANTICIPATED DATA CENTER FACILITIES, AND THE EQUIPPING OF THOSE SAME DATA CENTER FACILITIES BY THE TENANT OF THOSE DATA CENTER FACILITIES, ALL OF WHICH TO BE LOCATED WITHIN THE BOUNDARIES OF THE COUNTY, BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF NINE ANTICIPATED INDENTURES, EIGHT ANTICIPATED SUB-SUBLEASE AGREEMENTS, NINE ANTICIPATED LEASE AGREEMENTS, NINE ANTICIPATED BOND PURCHASE AGREEMENTS, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECTS; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECTS; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Doña Ana County (the "County") is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the "State") created pursuant to Sections 4-7-1 through 4-7-3, NMSA 1978; and

WHEREAS, pursuant to the Industrial Revenue Bond Act (Sections 4-59-1 through 4-59-16, NMSA 1978, as amended) (the "Act"), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a

4941227v3



2520581

ORDINANCE/DAC

SEP 22, 2025 04:22:23 PM PAGES: 19

Deputy: Kyanne Sherman

Amanda López Askin, County Clerk, Dona Ana, NM

1 balanced and stable economy in the county to promote public health, welfare, safety, convenience
2 and prosperity; and
3

4 WHEREAS, Yucca Growth Infrastructure, LLC, a Delaware limited liability company (the
5 “Series 2025A Company”), which will be authorized to do business in New Mexico prior to the
6 issuance of the Series 2025A Bonds (defined below), has proposed to the County that it will
7 construct and operate the Series 2025A Project (defined below); Red Chiles A, LLC, a Delaware
8 limited liability company, Red Chiles B, LLC, a Delaware limited liability company, Red Chiles
9 C, LLC a Delaware limited liability company, and Red Chiles D, LLC a Delaware limited liability
10 company (each with its successors, assigns, affiliates and subsidiaries, a “Series 2025B Company”
11 and, collectively, the “Series 2025B Companies”), each of which will be authorized to do business
12 in New Mexico prior to the issuance of the Series 2025B Bonds (defined below), has proposed to
13 the County that it will construct and operate the Series 2025B Project (defined below); and Green
14 Chile Ventures LLC, a Delaware limited liability company (together with its successors, assigns,
15 affiliates and subsidiaries, the “Series 2025C Company” and together with the Series 2025A
16 Company and Series 2025B Companies, the “Companies”), which will be authorized to do
17 business in New Mexico prior to the issuance of the Series 2025C Bonds (defined below), has
18 proposed to the County that it will equip and operate the Series 2025C Project (defined below);
19 and
20

21 WHEREAS, the Series 2025A Company has presented to the Doña Ana County Board of
22 County Commissioners (the “Commission”) a proposal whereby the County would issue its
23 Taxable Industrial Revenue Bonds (Project Jupiter) Series 2025A (or such other series designation
24 as set forth in the Series 2025A Indenture (defined below)) (the “Series 2025A Bonds”), to finance
25 the “Series 2025A Project,” which will consist of the acquisition, construction, equipping and
26 installation of certain power generation, battery storage, a microgrid and related infrastructure,
27 facilities and real property (the “Series 2025A Project Property”), which shall be located in the
28 County and outside the corporate limits of any municipality in the County (the “Series 2025A
29 Project Site”); and
30

31 WHEREAS, the Series 2025B Companies have presented to the Commission a proposal
32 whereby the County would issue its Taxable Industrial Revenue Bonds (Project Jupiter) Series
33 2025B (or such other series designation as set forth in the Series 2025B Indentures (defined
34 below)) (the “Series 2025B Bonds”) in four anticipated subseries, to finance the “Series 2025B
35 Project,” which will consist of the acquisition, construction, equipping and installation of certain
36 data center facilities and related infrastructure, facilities, and real property (the “Series 2025B
37 Project Property”), which shall be located in the County and outside the corporate limits of any
38 municipality in the County (the “Series 2025B Project Site”); and
39

40 WHEREAS, the Series 2025C Company has presented to the Commission a proposal
41 whereby the County would issue its Taxable Industrial Revenue Bonds (Project Jupiter) Series
42 2025C (or such other series designation as set forth in the Series 2025C Indentures (defined
43 below)) (the “Series 2025C Bonds” and together with the Series 2025A Bonds and Series 2025B
44 Bonds, the “Bonds”) in four anticipated subseries, to finance the “Series 2025C Project,” which
45 will consist of the acquisition, equipping and installation of certain data center facilities and related
46 infrastructure and facilities (the “Series 2025C Project Property” and together with the Series

1 2025A Project Property and Series 2025B Project Property, the "Project Property"), which shall
2 be located in the County and outside the corporate limits of any municipality in the County (the
3 "Series 2025C Project Site" and together with the Series 2025A Project Site and Series 2025B
4 Project Site, the "Project Site"); and

5
6 WHEREAS, under the Series 2025A Company's proposal, the County would enter into an
7 indenture (the "Series 2025A Indenture") with an affiliated entity serving as the purchaser of the
8 Series 2025A Bonds (the "Series 2025A Purchaser"), the Series 2025A Company, and a to-be-
9 identified depository bank (the "Depository"), under the Series 2025B Companies' proposal, the
10 County would enter into four indentures (the "Series 2025B Indentures") with affiliated entities
11 serving as the purchasers of the Series 2025B Bonds (the "Series 2025B Purchasers"), the Series
12 2025B Companies, and the Depository, and under the Series 2025C Company's proposal, the
13 County would enter into four indentures (the "Series 2025C Indentures" and together with the
14 Series 2025A Indenture and Series 2025B Indentures, the "Indentures") with an affiliated entity
15 serving as the purchaser of the Series 2025C Bonds (the "Series 2025C Purchaser" and together
16 with the Series 2025A Purchaser and Series 2025B Purchasers, the "Purchasers"), the Series
17 2025C Company, and the Depository, pursuant to each of which and together with this ordinance
18 (the "Bond Ordinance"), the County would issue the Bonds; and

19
20 WHEREAS, under the Series 2025A Company's proposal, the County and the Series
21 2025A Company would enter into a lease agreement (the "Series 2025A Lease") pursuant to which
22 the Series 2025A Company will lease the Series 2025A Project Property from the County and the
23 Series 2025A Company will make payments sufficient to pay the principal of and interest on the
24 Series 2025A Bonds and to pay all other Series 2025A Company obligations incurred pursuant to
25 the provisions of the 2025A Lease and this Bond Ordinance; and

26
27 WHEREAS, under the Series 2025A Company's proposal, the Series 2025A Company
28 anticipates subleasing certain of its interests in the Series 2025A Lease to the Series 2025B
29 Companies and the Series 2025C Company; and

30
31 WHEREAS, under the Series 2025B Companies' proposal, the County and the Series
32 2025B Companies would enter into four anticipated sub-sublease agreements (the "Series 2025B
33 Sub-Subleases"), pursuant to which the Series 2025B Companies will sub-sublease their leasehold
34 interests in the Series 2025A Lease to the County, and four anticipated lease agreements (the
35 "Series 2025B Leases"), pursuant to which the Series 2025B Companies will lease the Series
36 2025B Project Property from the County and the Series 2025B Companies will make payments
37 sufficient to pay the principal of and interest on the Series 2025B Bonds and to pay all other Series
38 2025B Companies obligations incurred pursuant to the provisions of the Series 2025B Leases and
39 this Bond Ordinance; and

40
41 WHEREAS, under the Series 2025B Companies' proposal, the Series 2025B Companies
42 will sublease certain of their interests in the Series 2025B Leases to the Series 2025C Company;
43 and

44
45 WHEREAS, under the Series 2025C Company's proposal, the County and the Series
46 2025C Company would enter into four anticipated sub-sublease agreements (the "Series 2025C

1 Sub-Subleases” and together with the Series 2025B Sub-Subleases, the “Sub-Subleases”),
2 pursuant to which the Series 2025C Company will sub-sublease its leasehold interests in the Series
3 2025A Lease and Series 2025B Leases to the County, and four anticipated lease agreements (the
4 “Series 2025C Leases” and together with the Series 2025A Lease and Series 2025B Leases, the
5 “Leases”), pursuant to which the Series 2025C Company will lease the Series 2025C Project
6 Property from the County and the Series 2025C Company will make payments sufficient to pay
7 the principal of and interest on the Series 2025C Bonds and to pay all other Series 2025C
8 Company’s obligations incurred pursuant to the provisions of the Series 2025C Lease and this
9 Bond Ordinance; and

10
11 WHEREAS, the County is authorized to enter into, deliver and perform all of its
12 obligations under the Bond Documents (as defined below) and to issue, execute and deliver the
13 Bonds pursuant to the Act and the Bond Ordinance; and

14
15 WHEREAS, the Series 2025A Bonds in a principal amount not to exceed \$15,000,000,000
16 will be issued, sold and delivered by the County in a private sale to the Series 2025A Purchaser
17 pursuant to a bond purchase agreement to be dated as of the initial date of delivery of the Series
18 2025A Bonds among the County, the Series 2025A Purchaser and the Series 2025A Company (the
19 “Series 2025A Bond Purchase Agreement”); and

20
21 WHEREAS, the Series 2025B Bonds in an aggregate, principal amount not to exceed
22 \$25,000,000,000 in four anticipated subseries will be issued, sold and delivered by the County in
23 private sales to the Series 2025B Purchasers pursuant to bond purchase agreements to be dated as
24 of the initial date of delivery of the Series 2025B Bonds among the County, the Series 2025B
25 Purchasers and the Series 2025B Companies (the “Series 2025B Bond Purchase Agreements”);
26 and

27
28 WHEREAS, the Series 2025C Bonds in an aggregate, principal amount not to exceed
29 \$125,000,000,000 in four anticipated subseries will be issued, sold and delivered by the County in
30 private sales to the Series 2025C Purchaser pursuant to bond purchase agreements to be dated as
31 of the initial date of delivery of the Series 2025C Bonds among the County, the Series 2025C
32 Purchaser and the Series 2025C Company (the “Series 2025C Bond Purchase Agreements” and
33 together with the Series 2025A Bond Purchase Agreement and the Series 2025B Bond Purchase
34 Agreements, the “Bond Purchase Agreements”); and

35
36 WHEREAS, the proceeds of the Series 2025A Bonds shall be applied to pay the costs of
37 acquiring, constructing and installing the Series 2025A Project Property and to pay certain costs
38 associated with the issuance and sale of the Series 2025A Bonds; and

39
40 WHEREAS, the proceeds of the Series 2025B Bonds shall be applied to pay the costs of
41 acquiring, constructing and installing the Series 2025B Project Property and to pay certain costs
42 associated with the issuance and sale of the Series 2025B Bonds; and

43
44 WHEREAS, the proceeds of the Series 2025C Bonds shall be applied to pay the costs of
45 acquiring, constructing and installing the Series 2025C Project Property and to pay certain costs
46 associated with the issuance and sale of the Series 2025C Bonds; and

1
2 WHEREAS, the Commission has determined that it is in the best interest of the County to
3 issue the Bonds and to execute and deliver the Bond Documents (as defined below) and other
4 documents related thereto; and
5

6 WHEREAS, the County will enter into the following agreements in connection with the
7 issuance of the Bonds:
8

- 9 1. The Sub-Subleases
- 10 2. The Leases
- 11 3. The Indentures
- 12 4. The Bond Purchase Agreements
- 13

14 (collectively referred to in this Bond Ordinance as the "Bond Documents"); and
15

16 WHEREAS, the County is authorized to issue the Bonds under the Act and after having
17 considered the Companies' proposals, has concluded that it is desirable at this time to authorize
18 the issuance of the Series 2025A Bonds to finance the Series 2025A Project, the Series 2025B
19 Bonds to finance the Series 2025B Project, and the Series 2025C Bonds to finance the Series
20 2025C Project, and that the County's issuance of the Bonds will constitute and be a valid public
21 purpose under the Act; and
22

23 WHEREAS, this Commission has been advised by its bond counsel that the disclosure
24 provisions of Rule 15c2-12 of the United States Securities and Exchange Commission are not
25 applicable to this transaction inasmuch as the Series 2025A Bonds are being sold in a private sale
26 to the Series 2025A Purchaser, the Series 2025B Bonds are being sold in a private sale to the Series
27 2025B Purchasers, and the Series 2025C Bonds are being sold in a private sale to the Series 2025C
28 Purchaser, without participation of an underwriter in either private sale; and
29

30 WHEREAS, there has been published in the *Las Cruces Sun-News*, a newspaper of general
31 circulation in the County, public notice of the Commission's intention to adopt this Bond
32 Ordinance, which notice contained certain information concerning the ownership, purpose, and
33 size of the Series 2025A Project, the Series 2025B Project, and the Series 2025C Project and the
34 amount of the Bonds anticipated to be issued collectively to finance the Series 2025A Project, the
35 Series 2025B Project, and the Series 2025C Project, which notice was published at least fourteen
36 (14) days prior to final action upon this Bond Ordinance; and
37

38 WHEREAS, payments in lieu of tax ("PILOTs") will be paid to the County, the School
39 Districts (as defined in the Series 2025A Lease) in compliance with Section 4-59-4(A)(2)
40 NMSA1978, as amended, and the Hueco/Lower Rio Grande Flood District for each year in which
41 the Series 2025A Bonds are outstanding, as reflected in the form of the Series 2025A Lease
42 approved in connection with this Bond Ordinance; and
43

44 WHEREAS, PILOTs will be paid to the County for each year in which the Series 2025B
45 Bonds are outstanding, as reflected in the form of the Series 2025B Leases approved in connection
46 with this Bond Ordinance; and

1 WHEREAS, PILOTs will be paid to the County for each year in which the Series 2025C
2 Bonds are outstanding, as reflected in the form of the Series 2025C Leases approved in connection
3 with this Bond Ordinance; and
4

5 WHEREAS, the County has given notice to the County Assessor and any entity located in
6 the County authorized to levy taxes on property in the County of its intent to consider this Bond
7 Ordinance authorizing the issuance of the Bonds at least thirty (30) days prior to the date hereof
8 and at which this Bond Ordinance is to be considered for adoption by the Board;
9

10 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE
11 GOVERNING BODY OF DOÑA ANA COUNTY, NEW MEXICO:
12

13 Section 1. RATIFICATION. All actions not inconsistent with the provisions of this
14 Bond Ordinance previously taken by the Commission and the officials of the County directed
15 toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified,
16 approved and confirmed.
17

18 Section 2. FINDINGS.
19

20 A. General. The Commission hereby declares that it has considered all
21 relevant information presented to it relating to the Bonds, the Series 2025A Project, the Series
22 2025B Project and the Series 2025C Project and hereby finds and determines that the issuance of
23 the Bonds pursuant to the Bond Ordinance to provide funds for the acquisition, construction and
24 installation of the Project Property is necessary and advisable and in the interest of and will
25 promote the use of the natural resources of the State, industry and trade and a sound and proper
26 balance in the State between agriculture, commerce and industry.
27

28 B. The Commission finds that:
29

30 (1) The Series 2025A Bonds will be issued for the purpose of financing
31 the acquisition, construction and equipping of the Series 2025A Project.
32

33 (2) The Series 2025B Bonds will be issued for the purpose of financing
34 the acquisition, construction and equipping of the Series 2025B Project.
35

36 (3) The Series 2025C Bonds will be issued for the purpose of financing
37 the acquisition and equipping of the Series 2025C Project.
38

39 (4) The aggregate face amount of obligations to be issued with respect
40 to financing the Series 2025A Project will not collectively exceed \$15,000,000,000.
41

42 (5) The aggregate face amount of obligations to be issued with respect
43 to financing the Series 2025B Project will not collectively exceed \$25,000,000,000.
44

45 (6) The aggregate face amount of obligations to be issued with respect
46 to financing the Series 2025C Project will not collectively exceed \$125,000,000,000.

(7) The developer of the Series 2025A Project is the Series 2025A Company.

(8) The developers of the Series 2025B Project are the Series 2025B Companies.

(9) The developer of the Series 2025C Project is the Series 2025C Company.

(10) The Series 2025A Company has represented that the location of the Series 2025A Project Site is within the map attached to this Bond Ordinance as Exhibit A.

(11) The Series 2025B Companies have represented that the location of the Series 2025B Project Site is within the map attached to this Bond Ordinance as Exhibit B.

(12) The Series 2025C Company has represented that the location of the Series 2025C Project Site is within the map attached to this Bond Ordinance as Exhibit C.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Series 2025A Bonds in a principal amount not to exceed \$15,000,000,000 and the use of the proceeds of the Series 2025A Bonds to finance the cost of the Series 2025A Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Series 2025A Bonds at par at a purchase price not to exceed \$15,000,000,000 is approved.

The issuance of the Series 2025B Bonds in four anticipated subseries in a maximum, aggregate principal amount not to exceed \$25,000,000,000 and the use of the proceeds of the Series 2025B Bonds to finance the cost of the Series 2025B Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Series 2025B Bonds at par at a maximum, aggregate principal amount not to exceed \$25,000,000,000 is approved.

The issuance of the Series 2025C Bonds in four anticipated subseries in a maximum, aggregate principal amount not to exceed \$125,000,000,000 and the use of the proceeds of the Series 2025C Bonds to finance the cost of the Series 2025C Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Series 2025C Bonds at par at a maximum, aggregate principal amount not to exceed \$125,000,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Series 2025A Bonds shall (i) be in the form and denomination, shall be numbered, dated, and contain the series

1 designation as set forth in the Series 2025A Indenture (including, but not limited to, a series
2 designation corresponding to the year in which the Series 2025A Bonds are issued), (ii) be payable
3 as to principal and interest and subject to redemption in the amounts, upon the conditions and at
4 the times and prices set forth in the Series 2025A Indenture; and (iii) be issued in a principal
5 amount not to collectively exceed \$15,000,000,000, bearing interest at the rate and maturing on
6 the date set forth in the Series 2025A Indenture.

7
8 Subject to the limitations set forth in this Bond Ordinance, each subseries
9 of the Series 2025B Bonds shall (i) be in the form and denomination, shall be numbered, dated,
10 and contain the subseries designation as set forth in each of the Series 2025B Indentures (including,
11 but not limited to, series designations corresponding to the year in which each of the subseries of
12 the Series 2025B Bonds are issued), (ii) be payable as to principal and interest and subject to
13 redemption in the amounts, upon the conditions and at the times and prices set forth in each of the
14 Series 2025B Indentures; and (iii) when combined will be issued in a principal amount not to
15 collectively exceed \$25,000,000,000, bearing interest at the rate and maturing on the date set forth
16 in each of the Series 2025B Indentures.

17
18 Subject to the limitations set forth in this Bond Ordinance, each subseries
19 of the Series 2025C Bonds shall (i) be in the form and denomination, shall be numbered, dated,
20 and contain the subseries designation as set forth in each of the Series 2025C Indentures (including,
21 but not limited to, series designations corresponding to the year in which each of the subseries of
22 the Series 2025C Bonds are issued), (ii) be payable as to principal and interest and subject to
23 redemption in the amounts, upon the conditions and at the times and prices set forth in each of the
24 Series 2025C Indentures; and (iii) when combined will be issued in a principal amount not to
25 collectively exceed \$125,000,000,000, bearing interest at the rate and maturing on the date set
26 forth in each of the Series 2025C Indentures.

27
28 C. Execution. The Bonds shall be signed by the presiding officer of the Board
29 of the Commission.

30
31 D. Interest Rate. The interest rate on the Bonds shall not exceed five percent
32 (5%) per annum.

33
34 Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS;
35 ACTIONS TO BE TAKEN. The Bond Documents in the form presented to the Commission and
36 attached to this Bond Ordinance as Exhibit D are hereby approved. The Chair and Vice Chair of
37 the Commission are each authorized to approve the final form, terms and provisions of the Bond
38 Documents on behalf of the Commission, with such changes and revisions as approved by the
39 County Manager, provided that such form, terms and provisions are consistent with this Bond
40 Ordinance, or with such changes and revisions as approved by the Commission by supplemental
41 resolution, and to execute and deliver in the name and on behalf of the County, and the County
42 Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents.
43 The Chair and Vice Chair of the Commission and the County Clerk are each further authorized to
44 execute, authenticate and deliver such certifications, instruments, documents, letters and other
45 agreements, including security agreements, and to do such other acts and things, either prior to or
46 after the date of delivery of the Bonds, as are necessary or appropriate to consummate the

1 transactions contemplated by the Bond Documents. The Chair and Vice Chair of the Commission,
2 the County Manager and other officers of the County shall take such action as is necessary to
3 effectuate the provisions of the Indentures and shall take such action as is necessary in conformity
4 with the Act to issue the Bonds for the Series 2025A Project, the Series 2025B Project and the
5 Series 2025C Project and for carrying out other transactions as contemplated by this Bond
6 Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of
7 any closing documents to be delivered in connection with the sale and delivery of the Bonds.

8
9 Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the
10 satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase
11 price for the Bonds as set forth in the Bond Purchase Agreements and the Indentures, the Bonds
12 shall be executed, authenticated and delivered to the Purchasers. The Bonds shall not be valid for
13 any purpose until the Bonds have been properly authenticated as set forth in the Indentures.

14
15 Section 6. FUNDS AND ACCOUNTS. There is established in the Indentures, and on
16 and after the date on which the Bonds are issued there shall be maintained, the funds and accounts
17 as set forth in the Indentures. Other funds and accounts may be established as are necessary under
18 the Indentures.

19
20 Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER
21 MATTERS. The following determinations are made:

22
23 A. The maximum amount necessary in each year to pay the principal of and
24 interest on the Series 2025A Bonds, assuming issuance of the Series 2025A Bonds as of October
25 1, 2025 in the maximum aggregate principal amount of \$15,000,000,000; the first, full annual
26 interest payment for the Series 2025A Bonds being due on October 1, 2026; and the Series 2025A
27 Bonds bearing a maximum interest rate of five percent (5%), is as follows:
28

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2026	\$750,000,000	-0-	\$750,000,000
2027	\$750,000,000	-0-	\$750,000,000
2028	\$750,000,000	-0-	\$750,000,000
2029	\$750,000,000	-0-	\$750,000,000
2030	\$750,000,000	-0-	\$750,000,000
2031	\$750,000,000	-0-	\$750,000,000
2032	\$750,000,000	-0-	\$750,000,000
2033	\$750,000,000	-0-	\$750,000,000
2034	\$750,000,000	-0-	\$750,000,000
2035	\$750,000,000	-0-	\$750,000,000
2036	\$750,000,000	-0-	\$750,000,000
2037	\$750,000,000	-0-	\$750,000,000
2038	\$750,000,000	-0-	\$750,000,000
2039	\$750,000,000	-0-	\$750,000,000
2040	\$750,000,000	-0-	\$750,000,000

2041	\$750,000,000	-0-	\$750,000,000
2042	\$750,000,000	-0-	\$750,000,000
2043	\$750,000,000	-0-	\$750,000,000
2044	\$750,000,000	-0-	\$750,000,000
2045	\$750,000,000	-0-	\$750,000,000
2046	\$750,000,000	-0-	\$750,000,000
2047	\$750,000,000	-0-	\$750,000,000
2048	\$750,000,000	-0-	\$750,000,000
2049	\$750,000,000	-0-	\$750,000,000
2050	\$750,000,000	-0-	\$750,000,000
2051	\$750,000,000	-0-	\$750,000,000
2052	\$750,000,000	-0-	\$750,000,000
2053	\$750,000,000	-0-	\$750,000,000
2054	\$750,000,000	-0-	\$750,000,000
2055	\$750,000,000	\$15,000,000,000	\$15,750,000,000

1
2 B. The maximum amount necessary in each year to pay the principal of and
3 interest on the Series 2025B Bonds, assuming issuance of the Series 2025B Bonds as of October
4 1, 2025 in the maximum aggregate principal amount of \$25,000,000,000; the first, full annual
5 interest payment for the Series 2025B Bonds being due on October 1, 2026; and the Series 2025B
6 Bonds bearing a maximum interest rate of five percent (5%), is as follows:
7

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2026	\$1,250,000,000	-0-	\$1,250,000,000
2027	\$1,250,000,000	-0-	\$1,250,000,000
2028	\$1,250,000,000	-0-	\$1,250,000,000
2029	\$1,250,000,000	-0-	\$1,250,000,000
2030	\$1,250,000,000	-0-	\$1,250,000,000
2031	\$1,250,000,000	-0-	\$1,250,000,000
2032	\$1,250,000,000	-0-	\$1,250,000,000
2033	\$1,250,000,000	-0-	\$1,250,000,000
2034	\$1,250,000,000	-0-	\$1,250,000,000
2035	\$1,250,000,000	-0-	\$1,250,000,000
2036	\$1,250,000,000	-0-	\$1,250,000,000
2037	\$1,250,000,000	-0-	\$1,250,000,000
2038	\$1,250,000,000	-0-	\$1,250,000,000
2039	\$1,250,000,000	-0-	\$1,250,000,000
2040	\$1,250,000,000	-0-	\$1,250,000,000
2041	\$1,250,000,000	-0-	\$1,250,000,000
2042	\$1,250,000,000	-0-	\$1,250,000,000

2043	\$1,250,000,000	-0-	\$1,250,000,000
2044	\$1,250,000,000	-0-	\$1,250,000,000
2045	\$1,250,000,000	-0-	\$1,250,000,000
2046	\$1,250,000,000	-0-	\$1,250,000,000
2047	\$1,250,000,000	-0-	\$1,250,000,000
2048	\$1,250,000,000	-0-	\$1,250,000,000
2049	\$1,250,000,000	-0-	\$1,250,000,000
2050	\$1,250,000,000	-0-	\$1,250,000,000
2051	\$1,250,000,000	-0-	\$1,250,000,000
2052	\$1,250,000,000	-0-	\$1,250,000,000
2053	\$1,250,000,000	-0-	\$1,250,000,000
2054	\$1,250,000,000	-0-	\$1,250,000,000
2055	\$1,250,000,000	\$25,000,000,000	\$26,250,000,000

1 C. The maximum amount necessary in each year to pay the principal of and
2 interest on the Series 2025C Bonds, assuming issuance of the Series 2025C Bonds as of October
3 1, 2025 in the maximum aggregate principal amount of \$125,000,000,000; the first, full annual
4 interest payment for the Series 2025B Bonds being due on October 1, 2026; and the Series 2025B
5 Bonds bearing a maximum interest rate of five percent (5%), is as follows:
6

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2026	\$6,250,000,000	-0-	\$6,250,000,000
2027	\$6,250,000,000	-0-	\$6,250,000,000
2028	\$6,250,000,000	-0-	\$6,250,000,000
2029	\$6,250,000,000	-0-	\$6,250,000,000
2030	\$6,250,000,000	-0-	\$6,250,000,000
2031	\$6,250,000,000	-0-	\$6,250,000,000
2032	\$6,250,000,000	-0-	\$6,250,000,000
2033	\$6,250,000,000	-0-	\$6,250,000,000
2034	\$6,250,000,000	-0-	\$6,250,000,000
2035	\$6,250,000,000	-0-	\$6,250,000,000
2036	\$6,250,000,000	-0-	\$6,250,000,000
2037	\$6,250,000,000	-0-	\$6,250,000,000
2038	\$6,250,000,000	-0-	\$6,250,000,000
2039	\$6,250,000,000	-0-	\$6,250,000,000
2040	\$6,250,000,000	-0-	\$6,250,000,000
2041	\$6,250,000,000	-0-	\$6,250,000,000
2042	\$6,250,000,000	-0-	\$6,250,000,000
2043	\$6,250,000,000	-0-	\$6,250,000,000
2044	\$6,250,000,000	-0-	\$6,250,000,000
2045	\$6,250,000,000	-0-	\$6,250,000,000

2046	\$6,250,000,000	-0-	\$6,250,000,000
2047	\$6,250,000,000	-0-	\$6,250,000,000
2048	\$6,250,000,000	-0-	\$6,250,000,000
2049	\$6,250,000,000	-0-	\$6,250,000,000
2050	\$6,250,000,000	-0-	\$6,250,000,000
2051	\$6,250,000,000	-0-	\$6,250,000,000
2052	\$6,250,000,000	-0-	\$6,250,000,000
2053	\$6,250,000,000	-0-	\$6,250,000,000
2054	\$6,250,000,000	-0-	\$6,250,000,000
2055	\$6,250,000,000	\$125,000,000,000	\$131,250,000,000

C. The Bonds will bear interest at a rate not to exceed five percent (5%), per annum.

D. The Bonds may be redeemed at any time without premium.

E. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

F. The Series 2025A Lease shall require that the Series 2025A Company maintain the Series 2025A Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Series 2025A Project Property as provided in the Series 2025A Lease.

F. The Series 2025A Lease shall require the Series 2025A Company make lease payments in an amount sufficient to pay the principal of and interest on the Series 2025A Bonds as principal and interest become due and to pay all related costs.

G. The Series 2025A Lease shall include provisions regarding payment of annual PILOTs to each of the County, the School Districts and the Hueco/Lower Rio Grande Flood District for so long as the Series 2025A Bonds are outstanding.

H. The Series 2025B Leases shall require that the Series 2025B Companies maintain the Series 2025B Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Series 2025B Project Property as provided in the Series 2025B Leases.

I. The Series 2025B Leases shall require the Series 2025B Companies make lease payments in an amount sufficient to pay the principal of and interest on the Series 2025B Bonds as principal and interest become due and to pay all related costs.

J. The Series 2025B Leases shall include provisions regarding payment of annual PILOTs to the County and the Hueco/Lower Rio Grande Flood District for so long as the Series 2025B Bonds are outstanding.

1 K. The Series 2025C Leases shall require that the Series 2025C Company
2 maintain the Series 2025C Project Property in safe repair and in such operating condition as is
3 needed for its operations and carry proper insurance with respect to the Series 2025C Project
4 Property as provided in the Series 2025C Leases.

5
6 I. The Series 2025C Leases shall require the Series 2025C Company make
7 lease payments in an amount sufficient to pay the principal of and interest on the Series 2025C
8 Bonds as principal and interest become due and to pay all related costs.

9
10 J. The Series 2025C Leases shall include provisions regarding payment of
11 annual PILOTs to the County and the Hueco/Lower Rio Grande Flood District for so long as the
12 Series 2025C Bonds are outstanding.

13
14 Section 8. LIMITED OBLIGATIONS. The Bonds shall be a special limited
15 obligation of the County, payable solely from the Basic Rent (as defined in the Series 2025A
16 Lease, the Series 2025B Leases, and the Series 2025C Leases) paid by the Companies to the
17 County as described in the Indentures and any other property or interest of the County specifically
18 pledged under the Indentures and shall never constitute a debt or indebtedness of the County or
19 the State or any political subdivision thereof within the meaning of any provision or limitation of
20 the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the
21 County or a charge against its general credit or taxing power. Nothing contained in this Bond
22 Ordinance or in the Bond Documents or any other instruments shall be construed as obligating the
23 County (except with respect to the Project Property and the application of the revenues therefrom
24 and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a
25 pecuniary liability or a charge upon the general credit of the County or against its taxing powers,
26 nor shall the breach of any agreement contained in this Bond Ordinance, the Bond Documents, the
27 Bonds or any other instrument be construed as obligating the County (except with respect to the
28 Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all
29 as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the
30 general credit of the County or against its taxing power, the County having no power to pay out of
31 its general funds, or otherwise contribute any part of the costs of constructing or equipping the
32 Project Property, nor power to operate the Project Property as a business or in any manner except
33 as lessor of the Project Property.

34
35 Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically
36 requires that the Series 2025A Lease, Series 2025B Leases and Series 2025C Leases contain
37 provisions relating to indemnification which provide that the Companies shall indemnify and hold
38 harmless the County and the Commission and its members, officials, employees and agents against
39 liability to the Companies, or to any third parties, that may be asserted against the County or the
40 Commission, its members, officials, members, officers, employees or agents with respect to the
41 County's ownership of the Project Property or the issuance of the Bonds and arising from the
42 condition of the Project Property or the acquisition, construction and operation of the Project
43 Property by the Companies, except to the extent Section 56-7-1, NMSA 1978 may preclude such
44 indemnity, and except to the extent that claims for any loss or damage arising out of or resulting
45 from the negligence, gross negligence, or willful misconduct of the County, the Commission, any
46 member thereof, or other official, employee or agent of the County.

Section 10. **NO RECOURSE AND LIABILITY.** No covenant, stipulation, obligation or agreement herein contained or contained in any document hereby approved and authorized for execution shall be deemed to be a covenant, stipulation, obligation, or agreement of any official, officer, Commission member, or employee of the County in his/her individual capacity, and neither the members of the Commission nor any officials executing the Bonds or the Bond Documents shall be liable personally on the Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 11. **BOND ORDINANCE IRREPEALABLE.** After the Bonds are issued, the Bond Ordinance shall be and remain irrevocable until the Bonds, including interest, are fully paid, canceled and discharged in accordance with the Indentures.

Section 12. **REPEALER.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 13. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 14. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Bond Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Chair of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

[Signature page follows]

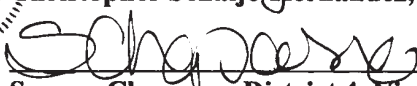
1 Passed and Adopted this 19th day of September 2025.



2 BOARD OF COUNTY COMMISSIONERS OF
3 DONA ANA COUNTY, NEW MEXICO

4 
5 Christopher Schaljo Hernandez, District 1, Chair

6 For/Against

7 
8 Susana Chaparro, District 4, Vice Chair

9 For/Against

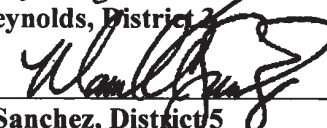
10 Gloria Gameros attended meeting via Webex

11 Gloria Gameros, District 2

12 For/Against

13 
14 Shannon Reynolds, District 3

15 For/Against

16 
17 Manuel A. Sanchez, District 5

18 For/Against

19
20
21
22 ATTEST:

23 
24 Amanda López Askin, P.
25 County Clerk

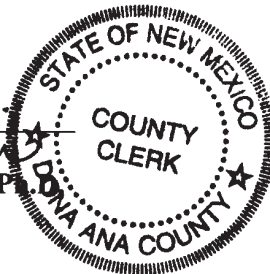


EXHIBIT A

SERIES 2025A PROJECT SITE MAP

[Parcel IDs may change as a result of Lot Line Adjustments and to readd Parcel IDs that have most recently been removed as the Companies continue to refine their plans]

[Fee Parcel IDs: 4013169297270, 4013168307484, 4014169264264, 4014168260459, 4012168399371, 4012168132132, and 4011168264264]

[Partial Interest Parcel IDs: 4009166254254, 4010166063456, 4010167181243, 4010167465267, 4011169264264, 4012169274282, and 4012168345512]

[Partial interest parcels relate to easements]

EXHIBIT B**SERIES 2025B PROJECT SITE MAP**

[Parcel IDs may change as a result of Lot Line Adjustments and to readd Parcel IDs that have most recently been removed as the Companies continue to refine their plans]

[Fee Parcel IDs: 4013169297270, 4013168307484, 4014169264264, 4014168260459, 4012168399371, 4012168132132, and 4011168264264]

[Partial Interest Parcel IDs: 4009166254254, 4010166063456, 4010167181243, 4010167465267, 4011169264264, 4012169274282, and 4012168345512]

[Partial interest parcels relate to easements]

EXHIBIT C

SERIES 2025C PROJECT SITE MAP

[Parcel IDs may change as a result of Lot Line Adjustments and to readd Parcel IDs that have most recently been removed as the Companies continue to refine their plans]

[Fee Parcel IDs: 4013169297270, 4013168307484, 4014169264264, 4014168260459, 4012168399371, 4012168132132, and 4011168264264]

[Partial Interest Parcel IDs: 4009166254254, 4010166063456, 4010167181243, 4010167465267, 4011169264264, 4012169274282, and 4012168345512]

[Partial interest parcels relate to easements]

1
2
3

EXHIBIT D

BOND DOCUMENTS

EXHIBIT 2

DOÑA ANA COUNTY, NEW MEXICO
ORDINANCE NO. 368-2025

1 AN ORDINANCE APPROVING LEDA PROJECT FOR [RED CHILES A,
2 LLC, A DELAWARE LIMITED LIABILITY COMPANY, RED CHILES B,
3 LLC, A DELAWARE LIMITED LIABILITY COMPANY, RED CHILES C,
4 LLC, A DELAWARE LIMITED LIABILITY COMPANY, RED CHILES D,
5 LLC, A DELAWARE LIMITED LIABILITY COMPANY
6 (COLLECTIVELY, AND TOGETHER WITH THEIR SUCCESSORS,
7 ASSIGNS AND AFFILIATES, "RED CHILES") AND YUCCA GROWTH
8 INFRASTRUCTURE, LLC, A DELAWARE LIMITED LIABILITY
9 COMPANY (TOGETHER WITH ITS SUCCESSORS, ASSIGNS AND
10 AFFILIATES, "YUCCA GROWTH" AND TOGETHER WITH RED
11 CHILES, THE "COMPANIES") PURSUANT TO THE LOCAL
12 ECONOMIC DEVELOPMENT ACT AND THE DOÑA ANA COUNTY
13 ECONOMIC DEVELOPMENT PLAN; APPROVING ECONOMIC
14 ASSISTANCE TO THE COMPANIES FOR A PORTION OF THE COSTS
15 OF THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF
16 DATA CENTER FACILITIES TO BE LOCATED IN DOÑA ANA
17 COUNTY, NEW MEXICO (THE "COUNTY"); AUTHORIZING THE
18 EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AMONG
19 THE COMPANIES, THE STATE OF NEW MEXICO (THE "STATE"),
20 AND THE COUNTY (THE "AGREEMENT") AND SUCH OTHER
21 AGREEMENTS AS ARE NECESSARY OR CONVENIENT TO PROVIDE
22 THE APPROVED ECONOMIC ASSISTANCE TO THE COMPANIES;
23 AUTHORIZING THE EXECUTION OF ALL OTHER NECESSARY
24 DOCUMENTS; MAKING CERTAIN DETERMINATIONS AND
25 FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN
26 ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS
27 INCONSISTENT WITH THIS ORDINANCE.

28
29 WHEREAS, the Local Economic Development Act, Sections 5-10-1 through 5-10-17
30 NMSA 1978, as amended (the "Act"), authorizes municipalities and counties to provide certain
31 economic assistance to qualifying entities as defined under the Act; and

32 WHEREAS, pursuant to the Act, the Board of County Commissioners (the "Commission")
33 has adopted County Ordinance No. 246-2009, which approved the Doña Ana County Economic
34 Development Plan, as amended from time to time (the "LEDA Plan"); and

35 WHEREAS, the purpose of the LEDA Plan is to allow public support of economic
36 development projects to foster, promote and enhance local economic development efforts while
37 continuing to protect against the unauthorized use of public money and other public resources;
38 and



CONTINUATION PAGE 2, ORDINANCE368-2025

1 **WHEREAS**, pursuant to the Act and the LEDA Plan, the Companies have applied for and
2 requested that the County and State provide them with certain economic assistance in connection
3 with the reimbursement of eligible expenditures associated with the costs of the acquisition,
4 construction, and improvement of data center facilities and related infrastructure and facilities by
5 the Companies (the “Project”); and

6 **WHEREAS**, the contributions made to the Project pursuant to this Ordinance would be in
7 exchange for certain commitments made by the Companies; and

8 **WHEREAS**, the Act and the LEDA Plan require each of the State and the County to enter
9 into a project participation agreement with the Companies meeting the requirements of the Act
10 and the LEDA Plan, including as to LEDA contributions supporting the Project and funded to the
11 Companies from the dedication by: (i) the State of fifty percent of the state gross receipts and
12 compensating tax increments generated by the taxable expenses related to the construction of the
13 Project for ten years and available for dedication to the Project; and (ii) the County of fifty
14 percent of the local gross receipts and compensating tax increments generated by the taxable
15 expenses related to the construction of the Project for ten years and available for dedication to
16 the Project; and

17 **WHEREAS**, the County staff, with assistance from the State Economic Development
18 Department, has worked with the Companies to prepare, and has negotiated the terms of, the
19 Agreement with the Companies,

20 **WHEREAS**, the total amount of public money expended and the value of credit pledged in
21 each fiscal year in which money is expended by the County for the Project (and any other
22 approved projects) pursuant to the Act does not and will not exceed ten percent (10%) of the
23 general fund expenditures of the County in such fiscal year; and

24 **WHEREAS**, after having considered the Project and the Agreement, the Commission has
25 concluded that the benefits of the Project to the County will be substantial, that it is desirable and
26 necessary at this time to authorize the County to enter into the Agreement and such other
27 agreements as are necessary or convenient to provide assistance to the Companies consistent
28 with the Act, and that the County's provision of the assistance contemplated by the Agreement
29 will constitute a valid public purpose under the Act;

30 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
31 **COMMISSIONERS OF DOÑA ANA COUNTY:**

CONTINUATION PAGE 3, ORDINANCE 368-2025

1 Section 1. Findings. The Commission finds that: (a) the Companies are each
2 qualifying entities as defined in Subsection 5-10-3(J) NMSA 1978; (b) that under the Agreement
3 the Companies will provide substantive contributions for the Project as described in Section 5-
4 10-10(B) NMSA 1978; (c) the Agreement complies with the requirements of the Act; (d) the
5 benefits of the Project to the County, in terms of increased tax revenues and other benefits
6 arising from retained and sustained employment, exceed the cost to the County of providing to
7 the Companies the assistance specified in the Agreement; and (e) the Agreement sets out (i) the
8 contributions to be made by the County and the Companies to the Project, (ii) the security
9 provided to the County by the Companies and the Companies' pledge of financial or material
10 participation and cooperation to guarantee the Companies' performance, (iii) a schedule for
11 project development and completion, including measurable goals and time limits for those goals,
12 and (iv) provisions for performance review and actions to be taken upon a determination that
13 performance is unsatisfactory.

14 Section 2. Approval of the Project and the Agreement. The County hereby approves
15 the Project and the Agreement in the form presented to the Commission with this Ordinance,
16 which provides, among other things, that the County will direct to the Project 50% of the
17 County's gross receipts and compensating tax increments generated from the taxable expenses
18 related to the construction of the Project for ten years (the "LEDA Project Funds"), such amount
19 to be applied to a portion of the costs of the Project, in exchange for which the Companies will
20 complete the Project and otherwise comply with the terms of the Agreement. There is hereby
21 appropriated for the Project the LEDA Project Funds generated by the Project.

22 Section 3. Authorization. The form, terms, and provisions of the Agreement in the
23 form presented to the Commission with this Ordinance, are in all respects approved and
24 authorized, and the County shall enter into such Agreement and such other agreements as are
25 necessary or convenient to provide assistance to the Companies consistent with the Act. The
26 Chair or Vice Chair acting in his or her absence, is authorized to execute the Agreement, with
27 only such changes as are not inconsistent with this Ordinance or such changes as may be
28 recommended by County's legal counsel. The Chair, County Manager and other officers of the
29 County are hereby authorized and directed to execute and deliver all other necessary documents,
30 and to take all action necessary or appropriate to effectuate the provisions of this Ordinance.

CONTINUATION PAGE 4, ORDINANCE 368-2025

1 Section 4. Severability. If any section, paragraph, clause or provision of this
2 Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or
3 unenforceability of that section, paragraph, clause, or provision shall not affect any of the
4 remaining provisions of this Ordinance.

5 Section 5. Repealer. All bylaws, ordinances, resolutions, and orders, or parts thereof,
6 inconsistent with this Ordinance are repealed by this Ordinance but only to the extent of that
7 inconsistency. This repealer shall not be construed to revive any bylaw, ordinance, resolution, or
8 order, or part thereof, previously repealed.

9 Section 6. Effective Date. Upon due adoption of this Ordinance, it shall be recorded
10 in the book of ordinances of the County kept for that purpose and this Ordinance shall be in full
11 force and effect 30 days thereafter, in accordance with law.

12
13 *[The Remainder of this Page is Intentionally Left Blank.]*
14

CONTINUATION PAGE 5, ORDINANCE 368-2025

Passed and Adopted this 19th day of September 2025.



BOARD OF COUNTY COMMISSIONERS OF
DONA ANA COUNTY, NEW MEXICO

Christopher Schaljo Hernandez
Christopher Schaljo-Hernandez, District 1, Chair

For/Against

Susana Chaparro
Susana Chaparro, District 4, Vice Chair

For/Against

Gloria Gameros attended meeting via webex

Gloria Gameros, District 2

For/Against

Shannon Reynolds
Shannon Reynolds, District 3

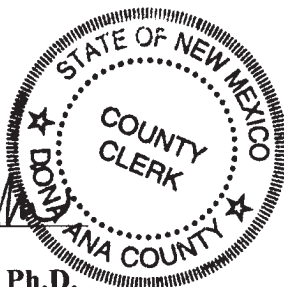
For/Against

Manuel A. Sanchez
Manuel A. Sanchez, District 5

For/Against

ATTEST:

Amanda López Askin



Amanda López Askin, Ph.D.
County Clerk

EXHIBIT 3

DOÑA ANA COUNTY ORDINANCE (No. 2) NO. 369-2025

AN ORDINANCE APPROVING AN ECONOMIC DEVELOPMENT PROJECT FOR RED CHILES A, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RED CHILES B, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RED CHILES C, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RED CHILES D, LLC, A DELAWARE LIMITED LIABILITY COMPANY (COLLECTIVELY, AND TOGETHER WITH THEIR SUCCESSORS, ASSIGNS AND AFFILIATES, "RED CHILES") AND YUCCA GROWTH INFRASTRUCTURE, LLC, A DELAWARE LIMITED LIABILITY COMPANY (TOGETHER WITH ITS SUCCESSORS, ASSIGNS AND AFFILIATES, "YUCCA GROWTH" AND TOGETHER WITH RED CHILES, THE "COMPANIES") PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND THE DOÑA ANA COUNTY ECONOMIC DEVELOPMENT PLAN; APPROVING ECONOMIC ASSISTANCE TO THE COMPANIES FOR A PORTION OF THE COSTS, IN THE FORM OF A REDUCTION OF CERTAIN BUILDING PERMIT FEES, OF THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF (I) A POWER GENERATION, BATTERY STORAGE AND MICROGRID FACILITY AND (II) FOUR DATA CENTER FACILITIES TO BE LOCATED IN DOÑA ANA COUNTY, NEW MEXICO (THE "COUNTY"); AUTHORIZING THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AMONG THE COMPANIES AND THE COUNTY (THE "AGREEMENT") TO PROVIDE THE APPROVED ECONOMIC ASSISTANCE TO THE COMPANIES; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

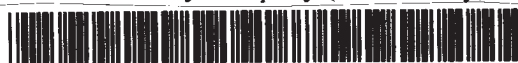
WHEREAS, the County of Doña Ana (the "County"), acting through its Board of County Commissioners, is a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State"); and

WHEREAS, Article 9, Section 14 of the State constitution permits counties to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources; and

WHEREAS, pursuant to the Local Economic Development Act, NMSA 1978, Sections 5-10-1 through 5-10-17 (the "Act"), no public support for economic development may be provided until the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan; and

WHEREAS, on September 22, 2009, pursuant to Doña Ana County Ordinance No. 246-2009 (the "Economic Development Plan Ordinance"), now codified as Chapter 166 in the Doña Ana County Code, the County established the Doña Ana County Economic Development Plan (the "LEDA Plan") as the County's economic development plan as required by NMSA 1978, Section 5-10-6; and

WHEREAS, as provided in the Economic Development Plan Ordinance, the County considers an application from Red Chiles A, LLC, a Delaware limited liability company, Red Chiles B, LLC, a Delaware limited liability company, Red Chiles C, LLC, a Delaware limited liability company, Red Chiles D, LLC, a Delaware limited liability company (collectively, and together with their successors,



assigns and affiliates, "Red Chiles") and Yucca Growth Infrastructure, LLC, a Delaware limited liability company (together with its successors, assigns and affiliates, "Yucca Growth" and together with Red Chiles, the "Companies") seeking a fee reduction for building permits (as defined in NMSA 1978, Section 5-10-3(K)) to develop the project. The project will include the construction, development and acquisition of a hyperscale, artificial intelligence data center campus, a collocated energy production and storage microgrid facility, and related infrastructure, all located within the County (the "Project"); and

WHEREAS, the County has determined that the Companies are a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act; and

WHEREAS, the County contributions made to the Companies and the Project pursuant to this Ordinance will be in exchange for certain commitments made by the Companies, all of which shall be memorialized in a project participation agreement by and between the County and the Companies; and

WHEREAS, the County has worked with the Companies to prepare, and has negotiated the terms of, the Project Participation Agreement with the Companies; and

WHEREAS, after having considered the Project and the Project Participation Agreement, the Commission has concluded that the benefits of the Project to the County will be substantial, that it is desirable and necessary at this time to authorize the County to enter into the Project Participation Agreement to provide assistance to the Companies consistent with the Act, and that the County's provision of the assistance contemplated by the Project Participation Agreement will constitute a valid public purpose under the Act;

NOW, THEREFORE, BE IT ORDERED BY THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Findings. The Commission finds that: (a) the Companies are each qualifying entities as defined in NMSA 1978, Section 5-10-3(L); (b) that under the Project Participation Agreement the Companies will provide substantive contributions for the Project as described in NMSA 1978, Section 5-10-10(B); (c) the Project Participation Agreement complies with the requirements of the Act; (d) the benefits of the Project to the County, in terms of increased tax revenues and other benefits arising from retained and sustained employment, exceed the cost to the County of providing to the Companies the assistance specified in the Project Participation Agreement; and (e) the Project Participation Agreement sets out (i) the contributions to be made by the County and the Companies to the Project, (ii) the security provided to the County by the Companies and the Companies' pledge of financial or material participation and cooperation to guarantee the Companies' performance, (iii) a schedule for project development and completion, including measurable goals and time limits for those goals, and (iv) provisions for performance review and actions to be taken upon a determination that performance is unsatisfactory.

Section 2. Approval of the Project and the Project Participation Agreement. The County hereby approves the Project and the Project Participation Agreement (PPA), pursuant to the Act and Section 5 of the Economic Development Plan Ordinance, in the form presented to the Commission with this Ordinance (No. 2), which provides, among other things, that the County

agrees to a reduced fee schedule for County building permits related to the Project as provided below:

Permit Fee Structure

Year	Annual Payment
2025	\$500,000
2026	\$1,500,000
2027	\$1,500,000
2028	\$1,000,000
Total Payments to County	\$4,500,000

In exchange, the Companies will complete the Project and otherwise comply with the terms of the Project Participation Agreement.

Section 3. Authorization. The form, terms, and provisions of the Project Participation Agreement in the form presented to the Commission with this Ordinance, are in all respects approved and authorized, and the County shall enter into such Project Participation Agreement to provide assistance to the Companies consistent with the Act. The Chair or Vice Chair acting in his or her absence, is authorized to execute the Project Participation Agreement, with only such changes as are not inconsistent with this Ordinance (No.2) or such changes as may be recommended by County's legal counsel. The Chair, County Manager and other officers of the County are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance (No.2).

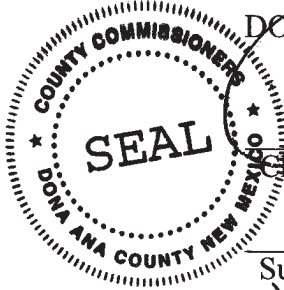
Section 4. Severability. If any section, paragraph, clause or provision of this Ordinance (No.2) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance (No.2).

Section 5. Repealer. All bylaws, ordinances, resolutions, and orders, or parts thereof, inconsistent with this Ordinance (No.2) are repealed by this Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, ordinance, resolution, or order, or part thereof, previously repealed.

Section 6. Effective Date. Upon due adoption of this Ordinance (No.2), it shall be recorded in the book of ordinances of the County kept for that purpose and this Ordinance (No.2) shall be in full force and effect 30 days thereafter, in accordance with law.

ADOPTED this 14th day of October 2025.

BOARD OF COUNTY COMMISSIONERS OF
DONA ANA COUNTY, NEW MEXICO

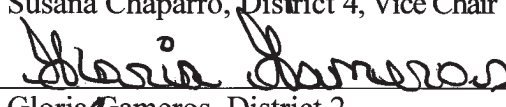



Christopher Schaljo-Hernandez, District 1, Chair

☐ For ☒ Against


Susana Chaparro, District 4, Vice Chair

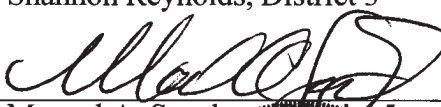
For ☒ Against


Gloria Gameros, District 2

☐ For ☒ Against

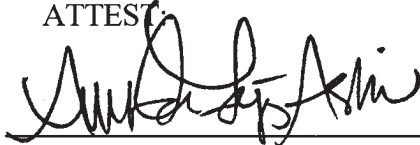

Shannon Reynolds, District 3

☐ For ☒ Against

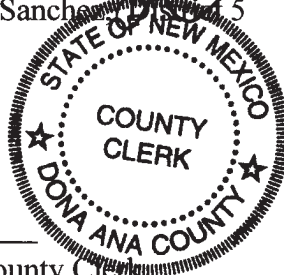

Manuel A. Sanchez, District 5

☐ For ☒ Against

ATTEST:



Amanda López Askin, Ph.D. County Clerk



Public Notices

Originally published at lcsun-news.com on 10/10/2025

NOTICE OF AIR QUALITY PERMIT APPLICATION

Acoma, LLC announces its application to the New Mexico Environment Department for an air quality permit for the construction of its microgrid facility. The expected date of application submittal to the Air Quality Bureau is October 9, 2025.

The exact location for the proposed facility known as, East Microgrid, will be at latitude 31.818333 dec deg North and longitude -106.679167 dec deg West. The approximate location of this facility is 3.6 miles south of Santa Teresa in Doña Ana county.

The proposed construction consists of the construction of a microgrid for power generation.

The estimated maximum quantities of any regulated air contaminant will be as follows in pound per hour (pph) and tons per year (tpy) and could change slightly during the course of the Department's review:

Pollutant:	Pounds per hour	Tons per year
PM 10	129.48	189.42
PM 2.5	129.48	189.42
Sulfur Dioxide (SO ₂)	8.88	35.01
Nitrogen Oxides (NO _x)	907.53	248.90
Carbon Monoxide (CO)	11,624.98	248.52
Volatile Organic Compounds (VOC)	1,084.68	64.01
Total sum of all Hazardous Air Pollutants (HAPs)	23.52	24.01
Ammonia (NH ₃)	78.68	293.40
Green House Gas Emissions as Total CO ₂ e	n/a	
15,058,313		

The standard and maximum operating schedules of the facility will be 24 hours a day, 7 days a week and a maximum of 52 weeks per year.

The owner of the Facility is: Acoma, LLC; 600 Congress Ave Ste 15041, Austin, TX 78701

The operator of the Facility is: Acoma, LLC; 600 Congress Ave Ste 15041, Austin, TX 78701

If you have any comments about the construction or operation of this facility, and you want your comments to be made as part of the permit review process, you must submit your comments in writing to this address: Permit Programs Manager; New Mexico Environment Department; Air Quality Bureau; 525 Camino de los Marquez, Suite 1; Santa Fe, New Mexico; 87505-1816. Other comments and questions may be submitted verbally. (505) 476-4300; 1 800 224-7009.

Please refer to the company name and site name, or send a copy of this notice along with

Public Notices

Originally published at lcsun-news.com on 10/10/2025

NOTICE OF AIR QUALITY PERMIT APPLICATION

Acoma, LLC announces its application to the New Mexico Environment Department for an air quality permit for the construction of its microgrid facility. The expected date of application submittal to the Air Quality Bureau is October 9, 2025.

The exact location for the proposed facility known as, West Microgrid, will be at latitude 31.823333 dec deg North and longitude -106.713056 dec deg West. The approximate location of this facility is 4.1 miles southwest of Santa Teresa in Doña Ana county.

The proposed construction consists of the construction of a microgrid for power generation.

The estimated maximum quantities of any regulated air contaminant will be as follows in pound per hour (pph) and tons per year (tpy) and could change slightly during the course of the Department's review:

Pollutant:	Pounds per hour	Tons per year
PM 10	60.57	247.45
PM 2.5	60.57	247.45
Sulfur Dioxide (SO ₂)	6.98	29.73
Nitrogen Oxides (NO _x)	1,291.48	249.87
Carbon Monoxide (CO)	3,241.82	245.74
Volatile Organic Compounds (VOC)	198.43	131.75
Total sum of all Hazardous Air Pollutants (HAPs)	31.71	19.80
Ammonia (NH ₃)	62.48	249.06
Green House Gas Emissions as Total CO ₂ e	n/a	
31,502,101		

The standard and maximum operating schedules of the facility will be 24 hours a day, 7 days a week and a maximum of 52 weeks per year.

The owner of the Facility is: Acoma, LLC; 600 Congress Ave Ste 15041, Austin, TX 78701

The operator of the Facility is: Acoma, LLC; 600 Congress Ave Ste 15041, Austin, TX 78701

If you have any comments about the construction or operation of this facility, and you want your comments to be made as part of the permit review process, you must submit your comments in writing to this address: Permit Programs Manager; New Mexico Environment Department; Air Quality Bureau; 525 Camino de los Marquez, Suite 1; Santa Fe, New Mexico; 87505-1816. Other comments and questions may be submitted verbally. (505) 476-4300; 1 800 224-7009.

Please refer to the company name and site name, or send a copy of this notice along with

INDUSTRIAL REVENUE BONDS

56 Attachment 1

Doña Ana County

Exhibit A

Application for Industrial Revenue Bond Financing

How to Apply to Doña Ana County Industrial Revenue Bond Program

Complete the Application

Each applicant seeking assistance from the Doña Ana County Industrial Revenue Bond Program must complete the application.

A nonrefundable application fee of \$25,000 must be included with this application.

Make the check payable to Doña Ana County.

Information in the application may be subject to public review under New Mexico state law, except for information that is considered deniable by the Inspection of Public Records Act.

Complete New Mexico State Environmental Assessment.

Submit a report that assesses the proposed site and identifies the following:

1. Any potential or existing contamination.
2. Any potential or existing archaeological or culture sites.
3. Any potential or existing protected, threatened or endangered plant or animal species.

Mail the completed application and a check for the application fee payable to:

Doña Ana County

Attn: County Manager

845 N. Motel Boulevard, Room 2-140

Las Cruces, New Mexico 88007

DOÑA ANA COUNTY CODE

Please answer all questions in typed format. Use "None" or "Not Applicable" where necessary. Information in this application may be subject to public review under New Mexico State Law, except for information that is considered deniable by the Inspection of Public Records Act.

I. APPLICANT DATA

A. Applicant Name See attached
Address _____
City/State/Zip _____

B. Applicant's Officer Responsible for Completing this Application
Name See attached
Title _____
Mailing Address _____
City/State/Zip _____
Telephone _____
E-Mail _____
Applicant's Tax ID No. _____

C. Business Type
☐ Sole Proprietorship
☐ Partnership
☐ Privately Held Corporation
☐ Public Corporation
☐ Not-for-Profit Corporation
☒ LLC
☐ Other _____

D. State of Incorporation See attached

E. Principal Stockholders (Owners of 20% or more of Stock Outstanding)
Name Corporate Title

F. Has the Applicant (or any related entity) received previous DAC Industrial Revenue Bond assistance?

Yes _____ No X

If yes, please give year(s) and project location _____

INDUSTRIAL REVENUE BONDS

G. Applicant's Legal Counsel

Firm Name Rodey Law Firm

Address 201 3rd St NW #2200

City/State/Zip Albuquerque, NM 87102

Telephone (505) 765-5900

Attorney's Name Peter Kelton, Justin Horwitz

Fax _____

E-Mail PKelton@rodey.com

II. PROJECT AND OCCUPANCY DATA

A. Location of proposed project facility (address if available)

Site located southeast of the intersection of Highway 136 and Highway 9

(no formal address). The facility is approximately 1,400 acres, located within a portion of existing parcels

4013169297270, 4013168307484, 4014169264264, and 4014168260459

B. Tax Parcel Code Number See above

C. Indicate Municipal Jurisdiction

Town N/A - Unincorporated Dona Ana County, 16 OUT tax district (Outside Sunland Park)

Village _____

City of Las Cruces _____

School District Gadsden

D. Current Legal Owner of property Santa Teresa Land, LLC

E. Who is the principal user(s) of the facility (the "company")? If there are multiple users, please indicate on attached sheet. If same as applicant, indicate "same" below.

Company Name See attached

Address _____

City/State/Zip _____

SIC/NAICS Code _____

Contact Person _____

Telephone _____

E-mail _____

% of facility occupied by company _____

DOÑA ANA COUNTY CODE

F. Are other facilities or related companies located within New Mexico State?

Yes _____ No x _____

G. Has the company actively sought sites and/or facilities in another county or state?

Yes x _____ No _____

If yes, please describe on separate sheet.

H. Description of project (check one or more)



New construction



Addition to existing facility



Renovation and modernization of existing facility



Acquisition and modernization of existing facility



New machinery and equipment



Other (specify) _____

I. Attach a general narrative description of the project and background on the user(s) of the facility. Provide Confidential Information Form (Appendix A) for user(s) of the facility.

J. Have any of the principals of the applicant filed for bankruptcy under the Federal Bankruptcy Code within the past 10 years? If the answer is yes, please provide details.

No

K. Have any of the principals been convicted of a state or federal felony within the past 10 years? If yes, please provide details.

No

L. Is the applicant or any of the principals of the applicant a defendant in any civil proceedings or the subject of any state or federal administrative actions? If the answer is yes, please provide details.

No

INDUSTRIAL REVENUE BONDS

III. COMPANY EMPLOYMENT INFORMATION

Total **current** employment within Doña Ana County is:

0 Full-Time/ 0 Part-Time

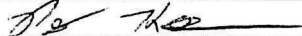
Projected Employment:

Note: If the project accommodates only a portion of the total, such as a division or department, please provide that employment information in the "impacted" column.

Total	Impacted	1st Year	2nd Year	3rd Year	Extend through the proposed term of the Bonds and attached as an Appendix
Full-time	see				
Part-time	attached				
Total					

Company representative responsible for completing employment information:

Name Peter Kelton, as agent

Signature 

Date 8/15/2025

IV. PROJECT COSTS AND FINANCING, AND EMPLOYEE BENEFITS

- A. Estimate the costs necessary for the construction, acquisition, rehabilitation, and improvement and/or equipping.

Estimated Costs Eligible Gross Receipts Tax Exemption Benefit

a. Building Construction or Renovation Costs	a. \$ <u>see</u>
b. Site work	b. \$ <u>attached</u>
c. Nonmanufacturing equipment	c. \$ <u></u>
d. Furniture, Fixtures	d. \$ <u></u>
e. Land and/or Building Purchase	e. \$ <u></u>
f. Manufacturing Equipment	f. \$ <u></u>
g. Soft Costs (Legal, Architect, Engineering)	g. \$ <u></u>
h. Other (specify)	h. \$ <u></u>
Total Project Costs	\$ <u></u>

Please provide a narrative describing the proposed employee benefits. Include medical insurance benefits, vacation policy, policy for national holidays, and 401K or other pensions or profit-sharing benefits.

DOÑA ANA COUNTY CODE

B. Indicate how the project will be financed

- | | |
|---------------------------------------|-----------------------|
| a. Tax-Exempt Industrial Revenue Bond | a. \$ <u>see</u> |
| b. Taxable Industrial Revenue Bond | b. \$ <u>attached</u> |
| c. Bank Financing | c. \$ _____ |
| d. Equity | d. \$ _____ |
| Total Sources | \$ _____ |

C. If applicant expects to benefit the tax-exempt industrial revenue, what is the total dollar value of "capital expenditures" that the applicant and company, or any related company or person, has expended within the last three years in the County in which the proposed project is to be located and expects to expend in that County three years after the bond issue?

D. Has the applicant made any arrangements for the financing of the project?

Yes _____ No X

If so, please specify bank, underwriter, etc.

INDUSTRIAL REVENUE BONDS

V. PROJECT CONSTRUCTION INFORMATION

- A. What is the proposed commencement date of construction or acquisition of the project?

The prospective Project is targeting land acquisition and construction start in Q4 2025, pending
issuance of all necessary governmental approvals and permits

- B. Outline the timetable for the project, indicating when project will be in full use.

See attached

- C. What are the water and wastewater requirements for the project?

See attached

- D. Who are the providers of water and wastewater?

The water and wastewater provider for the Project will be CRRUA.

VI. ENVIRONMENTAL ASSESSMENT

Must be completed and submitted along with this application. If not completed, please state when the Environmental Audit will be completed.

Name of Applicant's Officer Responsible for Completing Application:
(Please print)

Signature _____

Date of Application _____

For Office Use Only: Total Assessed Value:
Land Building

INDUSTRIAL REVENUE BONDS

56 Attachment 2

Doña Ana County

Appendix A

CONFIDENTIAL INFORMATION

Annual Company Revenue and Expense Estimates Associated with this Project
(Approximated)

Note: Please print or type answers

Total	Present	1st Year	2nd Year	3rd Year	Extended through the proposed term of the Bonds and attached as an Appendix
Sales (\$000)					
% sales generated by local workforce from clients outside of Doña Ana County					
Work contracted out to local vendors (\$000)					
Local employee payroll (\$000)					
All other local expenditures (\$000)					

Occupational Categories/Pay Ranges Associated with Project

Job Category	Number of Jobs	Salary Range	Educational Requirements
See attached	See attached	See attached	
See attached	See attached	See attached	See attached
See attached	See attached	See attached	See attached
See attached	See attached	See attached	
See attached	See attached	See attached	

How many jobs will be lost at other Company locations in the County because of the project?
0

How many jobs will be lost at other Company locations in New Mexico because of the project?
0

Project Jupiter Industrial Revenue Bond Application

Supplemental Information

Section I – Applicant Data

A. Applicant Data – Applicant consists of special purpose entities for this project development, as follows:

- Entity A – TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)
 - Authorized Signatory – Peter Kelton, as agent
- Entity B – TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)
 - Authorized Signatory – Peter Kelton, as agent
- Entity C – TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)
 - Authorized Signatory – Peter Kelton, as agent

We expect that these entities may establish wholly-owned, affiliate sub-entities to further delineate the “Project” from a development perspective during the IRB process.

Section II – Project and Occupancy Data

A. All or a portion of additional power and infrastructure parcels: 4008150264264, 4008151267243, 4008152270275, 4009152262275, 4009153263277, 4009154265264, 4010154265265, 4010155265265, 4010156265266, 4011156266268, 4011157269262, 4011158270265, 4011159270264, 4011160271268, 4011161274265, 4011162275269, 4011163264265, 4010163265265, 4010164392132, 4010162200200, 4010164170338, 4010165264264, 4010166264265, 4010166063456, 4010167181243, 4010168264263, 4010169264264, 4011169264264, 4012169274282, 4013169297270, 4014169264264

E. Principal User(s) of the Facility – There are three principal users of the facility currently contemplated, each with specific scopes throughout the project duration. These principal users have established separate entities that will engage in project negotiations. The Applicants consist of the following wholly-owned, affiliate sub-entities established throughout the Project, as follows:

- Entity A – TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)
 - Authorized Signatory – Peter Kelton, as agent
 - Responsible for the land acquisition, site work, hard construction cost and MEP/OFE required to develop the co-located microgrid (a self-contained energy system consisting of power generation and battery storage), infrastructure for power generation, and related assets to serve the Project
- Entity B – TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)

- Authorized Signatory – Peter Kelton, as agent
 - Responsible for the land acquisition, site work, hard construction cost and MEP/OFE required to develop the data center buildings and other ancillary buildings.
- Entity C – TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)
 - Authorized Signatory – Peter Kelton, as agent
 - Responsible for the server fit out and subsequent equipment refreshes of the facility

G. Has the company actively sought sites and/or facilities in another county or state? – Yes, the parties continually search for prospective sites for data center and related power generation development across the country, as part of their core business models. The location decision for Project Jupiter remains competitive and is contingent on securing the necessary IRB package proposed in this application.

I. Project Scope – This proposed Project scope includes development of a hyperscale, artificial intelligence (AI) data center campus, co-located microgrid (a self-contained energy system consisting of power generation and battery storage), infrastructure for power generation, and related assets to serve the Project.

The Project will be developed on approximately 1,400 acres – approximately 270 acres for the onsite power facility, approximately 400 acres for primary development and approximately 730 acres for near-term use as construction logistics and potential future expansion. There will be offsite utility infrastructure, outside the acreages listed above, to support bringing necessary utility services to the Project.

Construction for the Project is expected to begin in Q4 2025, pending approvals of necessary permits and incentives. The goal is to complete construction of the main data center facility, located on the primary 400 acres, and co-located microgrid by Q3 2028.

Section III – Applicant Employment Information

The projected job creation noted is prospective in nature and represents a conservative estimate for the new full-time employment expected to be created as part of this Project.

The Project aims to enhance regional technology capabilities, create high-quality jobs, and contribute to the growth of the technology industry while adhering to best practices in sustainability and operational efficiency.

Total **current** employment within Doña Ana County is: 0 Full-Time / 0 Part-Time

Projected Employment:

Note: If the Project accommodates only a portion of the total, such as a division or department, please provide that employment information in the “Impacted” column.

Entity A – Note: Year 1 is anticipated to be the first year of the micro-grid facility operation. The numbers below are cumulative forecasts intended to capture the job creation at the end of the year.

Total	Impacted	1st Year	2nd Year	3rd Year	Extend through the proposed term of the Bonds and attached as an Appendix
Full-time	N/A	30	50	50	50
Part-time	N/A	30	50	50	50
Total	N/A	60	100	100	100

Entity A anticipates the creation of approximately 100 new, permanent jobs as outlined above. It is anticipated that this specific project scope will create about 500 construction jobs during the approximately two-year construction duration.

Applicant representative responsible for completing employment information for Entity A:

Name: Peter Kelton, as Authorized Signatory for Entity A

Signature: _____

Date: August 15, 2025

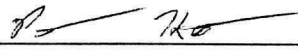
Entity B and C (consolidated) – Note: Year 1 is intended to represent the first year of facility operation. The numbers below are cumulative forecasts intended to capture the job creation at the end of the year.

					Extend through the proposed term of the Bonds and attached as an Appendix
Total	Impacted	1st Year	2nd Year	3rd Year	
Full-time	N/A	150	350	700	700
Part-time	N/A				
Total	N/A	150	350	700	700

Entities B & C anticipate the creation of approximately 700 new, permanent jobs as outlined above. It is anticipated that this specific project scope will create about 2,000 full-time construction jobs during the approximately two-year construction duration.

Applicant representative responsible for completing employment information for Entity B and Entity C (consolidated):

Name: Peter Kelton, as Authorized Signatory for Entity B and Entity C

Signature: 

Date: August 15, 2025

Section IV. Project Costs & Financing, and Employee Benefits

Section IV considered Confidential per New Mexico Inspection of Public Records Act (IRPA) as Business Sensitive/Trade Secret Information

A. Total Project Costs – Due to the variable nature of data center and related power generation development projects and lengthy duration of the IRB structure, the below breakdown represents a forecasted project capital expenditure for the course of the 30-year term. The totals provided below are intended to capture multiple equipment refreshes throughout the 30-year term but are subject to change based on market conditions.

Entity A

<u>Category</u>	<u>Cost</u>
a. Building Construction	\$3.3B
c. Non-manufacturing equipment	\$9.7B
h. Other (OE, PM Office, Insurance, Contingency)	\$2.0B
Total Project Cost:	\$15.0B

Entity B and Entity C (consolidated)

<u>Category</u>	<u>Cost</u>
a. Building Construction	\$17.0B
b. Site Work	\$2.0B
c. Non-manufacturing equipment	\$125.0B
d. Furniture, Fixtures	\$1.0B
e. Land and/or Building Purchase	\$500M
f. Manufacturing Equipment	-
g. Soft Costs	\$500M
h. Other (OE, PM Office, Insurance, Contingency)	\$4.0B
Total Project Cost:	\$150.0B

The Applicants have contracted with an outside consultant to prepare a cost segmentation study to further inform the breakdown of the requested bonding capacity and assess how it fits into the various exemption silos.

The Applicants are proposing breaking down the requested bonding capacity into three series, to be further refined throughout the IRB process.

- Series A – Requesting Taxable Industrial Revenue Bonds in the principal amount not to exceed \$15B to be allocated to Entity A. The purpose of this Series A is to support the land acquisition, site work, hard construction cost and MEP/OFE required to develop the co-located microgrid (a self-contained energy system consisting of power generation and battery storage), infrastructure for power generation, and related assets to serve the Project.

- Series B – Requesting Taxable Industrial Revenue Bonds in the principal amount not to exceed \$25B to be allocated to Entity B. The purpose of this Series B is to support the land acquisition, site work, hard construction cost and MEP/OFE required to develop the data center buildings and other ancillary buildings.
- Series C – Requesting Taxable Industrial Revenue Bonds in the principal amount not to exceed \$125B to be allocated to Entity C. The purpose of this Series C is to support the server fit out and subsequent equipment refreshes of the facility by the end user. Due to the lengthy duration of the term and dynamic cost profile of data center development and fit-out, this amount is estimated based on the best information known today.

Employment Benefit Narrative

The Project anticipates creating new full-time employment opportunities through a number of different companies. The employment benefit information below is reflective of the company that will be employing a vast majority of the personnel onsite. Benefits packages expected from alternate employers onsite are likely to be comparable in the scope of financial benefits offered.

The company will offer a comprehensive and competitive benefits package designed to support the health, financial security, and work-life balance of employees. It is estimated that the additional benefits provided to employees through the mechanisms outlined below will equate to a financial benefit of approximately 25% of the base salary.

Medical Insurance

Employees have access to high-quality medical coverage through either UnitedHealthcare (UHC), Kaiser Permanente, or another similarly-reputable provider of medical coverage. The company will provide access to a variety of plan options and associated costs will vary by plan and coverage level. The company will make bi-weekly contributions towards the insurance premiums in addition to the employee contributions as part of their bi-weekly pay cycle.

Vacation/Holiday Policy

The company observe standard paid holidays per year. In addition, full-time, non-hourly employees are eligible for flexible vacation, allowing for unlimited paid time off with manager approval.

Retirement & Financial Benefits

The company provides a 401(k) retirement plan with a company match of up to 3% of eligible compensation per pay period. Additional financial benefits include:

- Employee Stock Purchase Plan [REDACTED]
- Access to financial advisors
- Financial wellness programs and resources

B. The Applicant plans to fully fund this Project through the Taxable Industrial Revenue Bonds and does not expect to benefit from tax-exempt industrial revenue bonding.

Section V – Project Construction Information

B. The Project will include multiple data center buildings, ancillary infrastructure, and support facilities, which include but are not limited to a co-located microgrid and related assets. The Applicants currently project that the four phases of the Project will be constructed and made operational between the construction start in Q4 2025 and Q3 2028.

C. The Project team is actively working with Camino Real Regional Utility Authority (CRRUA), which will provide water and wastewater service to the Project, to determine available capacity to serve the site. The Project will be responsible for the necessary water/wastewater solutions, including offsite infrastructure extensions, to serve the campus. The Project will utilize a closed loop, non-evaporative cooling technology which will drastically minimize water needs and wastewater discharge for cooling operations. The data center buildings will require one-time water demand per building to fill the closed-loop system, but there will be no other water needs for cooling throughout ongoing operations, thus limiting ongoing water use to typical domestic usage.

Section VI – Environmental Assessment

Environmental Assessments are pending, and the Applicant expects to receive updated environmental assessments for the data center and related power generation development area on or around 8/22/25.

Environmental assessments have not been completed for the supporting offsite infrastructure extensions needed for the development and co-located microgrid. To the extent environmental assessments are required, the Applicant expects to complete within the next six months.

Appendix A - Confidential Information

Confidential per New Mexico Inspection of Public Records Act (IRPA) - Business Sensitive/Trade Secret Information

Annual Company Revenue & Expense Estimates Associated with Project

ENTITY A

Total	Present	1st Year	2nd Year	3rd Year	Extended through the proposed term of the Bonds and attached as an Appendix
Sales (\$000)	\$0	\$111,000	\$804,200	\$1,285,700	\$1,285,700 (Annually)
% sales generated by local workforce from clients outside of Doña Ana County	0%	0%	0%	0%	0%
Work contracted out to local vendors (\$000)	\$0	\$20,000	\$125,000	\$125,000	\$125,000 (Annually)
Local employee payroll (\$000)	\$0	\$6,600	\$11,000	\$11,000	\$11,000 (Annually)
All other local expenditures (\$000)	\$0	TBD – Depends on Final EPC	TBD – Depends on Final EPC	TBD – Depends on Final EPC	TBD – Depends on Final EPC

Occupational Categories/Pay Ranges Associated with Project

The projected job creation noted is prospective in nature and represents a conservative estimate for the new full-time employment expected to be created as part of this Project. The list below is not intended to be exhaustive nor all-inclusive, it represents major job categories for the anticipated employment creation.

Job Category	Number of Jobs	Salary Range	Educational Requirements
Construction	500	\$80,000 (average)	GED/equivalent and position dependent specific engineering, technical degrees
Operations	100	\$125,000 (average)	GED/equivalent and position dependent specific engineering, technical degrees

There exist no current company locations in the County or New Mexico, so there are no existing jobs anticipated to be lost through the job creation associated with this prospective Project. This Project anticipates the creation of a new industry segment with future growth potential for the region and the State.

ENTITY B and ENTITY C (consolidated)

Applicant has contracted with a third-party consultant to prepare an Economic Impact Assessment for the Project to identify anticipated direct, indirect, and induced benefits to the local community. This will be updated with those findings as they are finalized. Year 1 is anticipated to be the first year of facility operation.

Total	Prior to Operation Commencement	1st Year	2nd Year	3rd Year	Anticipated through proposed Bond Term
Sales (\$000)	\$0	TBD	TBD	TBD	TBD
% sales generated by local workforce from clients outside of Doña Ana County	\$0	TBD	TBD	TBD	TBD
Work contracted out to local vendors (\$000)	\$0	TBD	TBD	TBD	TBD
Local employee payroll (\$000)	\$0	\$14,850	+\$19,800	+\$34,650	\$69,300 (annually) ~\$2B (cumulatively)
All other local expenditures (\$000)	\$0	TBD	TBD	TBD	TBD

Occupational Categories/Pay Ranges Associated with Project

The projected job creation noted is prospective in nature and represents a conservative estimate for the new full-time employment expected to be created as part of this Project. The list below is not intended to be exhaustive nor all-inclusive, it represents major job categories for the anticipated employment creation.

Job Category	Approximate Number of Jobs	Salary Range	Educational Requirements
System Admin	450	\$75K-\$110K	Assoc/Bachelors
Program/IT Managers	30	\$75K-\$110K	Assoc/Bachelors
Hardware Dev & Directors	15	\$75K-\$110K	Bachelors
Logistics Analysts	5	\$75K-\$110K	Assoc/Bachelors
Facility Management & Operations	200	\$75K-\$110K	Assoc/Bachelors

There are no existing jobs anticipated to be lost through the job creation associated with this prospective Project. This Project anticipates the creation of a new industry segment with future growth potential for the region and the State.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
COUNSELLORS AND ATTORNEYS AT LAW

New Mexico Bank & Trust
320 Gold SW
Albuquerque, NM

Check No. [REDACTED]

201 3RD STREET N.W., SUITE 2200

P.O. BOX 1888

ALBUQUERQUE, NEW MEXICO 87103

Date: **August 13, 2025**

AMOUNT OF CHECK

***\$25,000.00

*****Twenty-five thousand and 00/100 DOLLARS*****

PAY TO THE ORDER OF:

Dona Ana County
845 N. Motel Blvd. Room 2-140
Las Cruces, NM 88007

By Laura L. Perez
By LA 2

TWO SIGNATURES REQUIRED IF AMOUNT
OF CHECK IS \$1000.00 or above





EXHIBIT 6

September 8, 2025

Doña Ana County Board of Commissioners

Christopher Schaljo-Hernandez
Chair of Board of Commissioners
schaljohernandez@donaanacounty.org

Susana Chaparro
Vice Chair of Board of
Commissioners
schapparro@donaanacounty.org

Gloria Gameros
ggameros@donaanacounty.org

Manuel Sanchez
msanchez@donaanacounty.org

Shannon Reynolds
sreynolds@donaanacounty.org

Doña Ana County Attorneys

Fred Kennon
Deputy County Attorney
fredk@donaanacounty.org

Cari Neill
Deputy County Attorney
carin@donaanacounty.org

Nelson J. Goodin
County Attorney
nelsong@donaanacounty.org

Doña Ana County Management

Scott Andrews
County Manager
scotta@donaanacounty.org

Stephen Lopez
Assistant County Manager
stephenl@donaanacounty.org

Jonathan Macias
Assistant County Manager
jonathanma@donaanacounty.org

Deborah Weir
Assistant County Manager
deborahw@donaanacounty.org

Amanda Gomez
Department Manager
amandag@donaana.gov

**Written Comments on the Proposed Doña Ana County Ordinances to Issue
Industrial Revenue Bonds and LEDA Funding for Project Jupiter**

To the Doña Ana County Board of Commissioners,

The New Mexico Environmental Law Center (“NMELC”) submits this comment on behalf of Sunland Park and Santa Teresa community members and Empowerment Congress of Doña Ana County (collectively, “Community”) for consideration.

The Project Jupiter Application, submitted to Doña Ana County on August 15, 2025, requests the County adopt an ordinance issuing taxable industrial revenue bonds (“IRB”) and adopt an ordinance for Local Economic Development Act (“LEDA”) funding. The issuance of industrial revenue bonds, as well as LEDA funding, requires Doña Ana County to make a fully informed decision within the public’s interest, in a manner that prevents the abuse and waste of public funds and resources.¹

Currently as submitted, the Project Jupiter Application is incomplete, as the Application lacks the information and supporting materials necessary for the County to make a fully informed decision on whether the issuance of the IRBs and LEDA funding is within the public’s interest and would not result in an unauthorized use of public funds and resources. Accordingly, for the foregoing reasons, Community demands the Doña Ana County Board of Commissioners deny the Project Jupiter Application for the issuance of IRBs and LEDA funding, and stay any future consideration of a similar application unless and until an application is submitted including all the necessary and critical technical data, factual evidence, and supporting materials required for consideration by the Board in the Doña Ana County code.

I. The Project Jupiter Application is incomplete and does not satisfy the four criteria required for the issuance of County industrial revenue bonds.

The Doña Ana County Code mandates that the County can issue IRBs “only after the County has been fully informed concerning the applicant and its current status and future plans.”² Thus, the County is required to consider and evaluate applications for IRBs on the basis of the following four criteria:

- “(1) The extent to which the proposed project will create new or preserve existing employment opportunities within the community;
- (2) The extent to which the proposed project with industrial revenue bonds will increase the County's tax base compared to the extent to which the proposed project without industrial revenue bonds will increase the County's tax base;
- (3) The extent to which the proposed project will enhance and strengthen the County as a center of commerce, including, but not limited to, research, food processing, and manufacturing or distribution point location; and

¹ See Doña Ana County Code § 56-8.A (“It is in the public interest that the issuance of industrial revenue bonds be made only after the County has been fully informed concerning the applicant and its current status and future plans; the protection of the County's interests requires thorough investigation of any request for industrial revenue bonds”); see NMSA 1978 § 5-10-2 (2024) (“The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources”).

² Doña Ana County Code § 56-8.A. (emphasis added).

(4) The extent to which the proposed project will upgrade and improve structures, improve site accessibility and usefulness, and otherwise provide for the public health, safety and welfare.”³

The four criteria must be applied to the project application itself, as the Doña Ana County Code requires the County to “use the information provided by the applicant in the industrial revenue bonds application form to evaluate the proposed project in terms of fulfillment of all goals and objectives contained in the County's Industrial Revenue Bonds Policy.”⁴ Thus, the Project Jupiter Application must provide enough information, supporting materials, and evidence for the County to properly apply the four criteria and make a fully-informed decision, as mandated by the Doña Ana County Code.⁵

The Project Jupiter Application does not provide the adequate information necessary to demonstrate it can and will satisfy the above criteria. Therefore, based on the current and incomplete Project Jupiter Application, the County cannot properly consider, evaluate, and apply the above required criteria and ultimately, make a “fully informed” decision at this time.⁶ Accordingly, Community demands the County deny Company’s Project Jupiter Application for the issuance of IRBs and LEDA funding if and until Project Jupiter submits a more complete application that the County can fully consider, as required by the Doña Ana County Code, before making a decision.

1. The Project Jupiter Application does not provide enough information, facts, and supporting evidence for the County to properly consider whether Project Jupiter can create new, or preserve, existing, sustainable, and permanent employment opportunities within the community.

The first criteria requires the County to be fully informed in its consideration of a proposed project’s potential employment opportunities.⁷ This means a project application should include the actual number of projected jobs it will provide within the community, supported by data and evidence. An applicant, for example, could provide evidence of the amount of local employment opportunities such a project has provided in other regions; or provide a third-party economic analysis in which the applicant can verify its employment projections are reasonable and actual.

Here, the Project Jupiter Application has provided only unsupported promises – providing no evidence or data to justify its local employment opportunity projections. The Project Jupiter Application solely states the proposed number of permanent jobs it may provide, without further evidence, justification, or guarantee that the 750 jobs will in fact exist upon

³ Doña Ana County Code § 56-8.D.

⁴ Doña Ana County Code § 56-8.C.

⁵ *See id.*; *see id.* at § 56-8.A.

⁶ Doña Ana County Code § 56-8.A.

⁷ Doña Ana County Code § 56-8.A, D(1).

completion of the Project's construction phase, or that any permanent jobs will be guaranteed to local residents and community members.⁸ The "Projected Employment" section and "Occupational Categories/Pay Ranges Associated with the Project" section of the Application merely cite "see attached" repeatedly.⁹

The "Supplemental Information" attached to the Project Jupiter Application, however, provides little additional support. The Project Jupiter applicant is divided into three entities responsible for the project development, all of which are marked "TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)."¹⁰ Thus, the County has received no confirmation, let alone disclosure, of the three entities purported to be responsible for providing the projected employment, until fourteen days before the County is to decide whether to issue the IRBs.¹¹ Fourteen days is not enough time for the County to verify the identities of each entity – who may then "further delineate" the actual Project to other, currently unnamed and ultimately, nonexistent sub-entities – to conduct a "thorough investigation of any request for industrial revenue bonds," and ultimately, for the County to be fully informed and adequately protect the County's and public's interests, as required by the Doña Ana County Code.¹² Moreover, the Application further states below the "TBD" markings that "We expect that these entities may establish wholly-owned, affiliate sub-entities to further delineate the 'Project' from a development perspective during the IRB process" – meaning the promises of long-term employment in the Project Jupiter Application are, at this point, based purely on speculation rather than factual evidence supporting the projected employment to Doña Ana County residents.¹³ Thus, regarding the actual number of jobs anticipated, the Application's Supplemental Information provides no information, facts, or evidence beyond unsupported numbers.¹⁴ Likewise, the "Employment Benefit Narrative" section is vague, claiming "The Project anticipates creating new full-time employment opportunities through a number of different companies."¹⁵ The Application does not name any specific company, nor provide any further details, facts, or supporting evidence to justify how Project Jupiter plans to fulfill its employment promises.

The same is true for the final section of the Application, Appendix A, in which any information detailing the amount of jobs, types of jobs, projected salaries, and educational requirements are hidden and marked confidential.¹⁶ Appendix A of the Project Jupiter Application states that it relies upon the New Mexico Inspection of Public Records Act's, NMSA

⁸ See Project Jupiter Application at Attachment 1:5; Attachment 2:1; Supplemental Information at 1-4; Appendix A at 1-2 (emphases added).

⁹ See *id.* at Attachment 1:5, Attachment 2:1.

¹⁰ See *id.* at Supplemental Information at 1.

¹¹ Doña Ana County Code § 56-7 (requiring public notice of the intent to adopt an industrial revenue bonds ordinance to be published at least fourteen days prior to consideration).

¹² See Doña Ana County Code § 56-8.A.

¹³ See Project Jupiter Application, at Supplemental Information at 1.

¹⁴ See Project Jupiter Application, at Supplemental Information at 1-4.

¹⁵ See *id.* at 6.

¹⁶ See Project Jupiter Application, Appendix A at 1-2.

1978 §14-2-1 *et seq.*, “Business Sensitive/Trade Secret Information” Section to justify the exclusion of any and all meaningful information within Appendix A.¹⁷ Community notes, however, that Project Jupiter states the projected number of jobs earlier in its Application, albeit without further supporting information, as well as has publicly stated the projected number, types of jobs, and projected salaries in several public meetings – effectively voiding any actual claim to trade secret exemption under the New Mexico Inspection of Public Records Act.

The Project Jupiter Application, as currently submitted, provides no factual basis or supporting information to justify that it can and will satisfy its own lofty promises of long-term, sustainable local employment for Doña Ana County residents. The Application does not even name, nor can it name, any existing and actual entity that will ensure Project Jupiter’s employment projections are actually realized. The Project Jupiter Application is purely speculative regarding its projected employment for Doña Ana County communities, and does not provide enough information, facts, or evidence to support its claims. Thus, the County cannot meaningfully consider and accurately determine the extent to which Project Jupiter may or may not create new employment opportunities, let alone preserve existing employment, within Doña Ana County, as required by the Doña Ana County Code.¹⁸

2. The Project Jupiter Application does not provide enough information, facts, or supporting evidence required for the County to properly consider whether the issuance of industrial revenue bonds will increase the County’s tax base.

In its consideration of the second criteria, the County must weigh how much a proposed project will increase the County’s tax base, dependent upon whether the County issues industrial revenue bonds.¹⁹

Here again, the Project Jupiter Application relies on unsupported assertions, lacking the necessary data, evidence, and justification to prove that the issuance of industrial revenue bonds will increase the County’s tax base. As stated above, the Project Jupiter Application does not provide any fact-based assertions or supporting materials to guarantee that Project Jupiter can and will provide its projected local employment opportunities. The Project Jupiter Application also does not make any sort of commitment, nor provide any evidence thereof, that any revenue generated from the proposed project will return to Doña Ana County and its communities. The Application provides no information as to how Project Jupiter will increase the County’s tax base, nor how the County’s issuance of IRBs will assist in any sort of increase to the County’s tax base. Because the Project Jupiter Application is incomplete, the County cannot properly consider whether the issuance of IRBs will increase the County’s tax base or not and make an adequately informed decision, as required by the Doña Ana County Code.²⁰

¹⁷ See *id.* at 1 (“Confidential per New Mexico Inspection of Public Records Act (IRPA) - Business Sensitive/Trade Secret information”).

¹⁸ Doña Ana County Code § 56-8.D(1), A.

¹⁹ Doña Ana County Code § 56-8.D(2).

²⁰ Doña Ana County Code § 56-8.D(2), A.

3. The Project Jupiter Application does not provide enough information, facts, or supporting evidence to allow the County to properly consider whether Project Jupiter will enhance and strengthen the County as a center of commerce.

The County must also evaluate how much, if at all, a proposed project will “enhance and strengthen the County as a center of commerce” in order to issue an IRB.²¹ Here, again, the Project Jupiter Application relies on unsupported claims rather than providing any information, supporting materials, evidence, commitment, or any adequate showing that Project Jupiter can and will strengthen the County as a center of commerce. The Project Jupiter Application does not name any specific company or entity that will be responsible for the project development, and based on recent public presentations given by Project Jupiter, Project Jupiter has not secured any tenants for this development.

Moreover, the Project Jupiter Application does not include any Economic Impact Assessment. Instead, the Application merely states, without factual support, that “Applicant has contracted with a third-party consultant to prepare an Economic Impact Assessment for the Project to identify anticipated direct, indirect, and induced benefits to the local community. This will be updated with those findings as they are finalized.”²² Unless and until the Economic Impact Assessment is finalized and includes sufficient documentation and supporting evidence demonstrating that Project Jupiter will enhance and strengthen Doña Ana County as a center of commerce, the County cannot properly evaluate the third criteria required by its Code,²³ and certainly should not vote to approve any IRB to support the Project.

4. The Project Jupiter Application does not provide enough information, facts, or supporting evidence to allow for the County to properly consider whether Project Jupiter will upgrade and improve structures, and be a significant threat to the public health, safety, and welfare of Doña Ana County residents.

The final criteria the County must thoroughly consider, in the public interest, is the extent to which a proposed project “will upgrade and improve structures, improve site accessibility and usefulness, and otherwise provide for the public health, safety and welfare.”²⁴

As with the other three criteria, the Project Jupiter Application does not provide any information, supporting materials, evidence, commitment, or guarantee that Project Jupiter will upgrade and improve structures. As such, the Application is incomplete, and the County cannot adequately evaluate whether Project Jupiter will upgrade and improve structures, as required by the Doña Ana County Code.²⁵

The Project Jupiter Application does not provide any information, supporting materials, evidence, commitment, or guarantee that it will provide for the public health, safety, and welfare of Doña Ana County communities. The Application merely states its Environmental Assessments are “pending,” and that the “[e]nvironmental assessments have not been completed for the supporting offsite infrastructure extensions needed for the development and co-located

²¹ Doña Ana County Code § 56-8.D(3).

²² See Project Jupiter Application, Appendix A at 2.

²³ Doña Ana County Code § 56-8.D(3), A.

²⁴ Doña Ana County Code § 56-8.D(4).

²⁵ See *id.*

microgrid.”²⁶ Moreover, the Application boldly states that, “[t]o the extent environmental assessments are required, the Applicant expects to complete within the next six months.”²⁷ Unless and until all Environmental Assessments are completed, finalized and include sufficient documentation and supporting evidence demonstrating that Project Jupiter will not be a significant threat to the public health, safety, and welfare – which the Application itself states it needs the next six months, at minimum, to complete²⁸ – the County cannot properly evaluate the fourth criteria and make a fully-informed decision, as required by the Doña Ana County Code.²⁹

Notably, the Project Jupiter Application actually suggests that Project Jupiter will be a significant threat to the public health, safety, and welfare by relying on the local public water supply to provide adequate water to operate. The Application specifically states that the water and wastewater providers for Project Jupiter will be the Camino Real Regional Utility Authority (“CRRUA”), the public utility currently responsible for the provision of water and wastewater services to Santa Teresa and Sunland Park communities and public.³⁰ The Application later states that it is still determining CRRUA’s available capacity to serve the site, while also providing generalized claims that Project Jupiter’s data center buildings will require a “one-time water demand per building, but there will be no other water needs for cooling throughout ongoing operations.”³¹ Here, again, the Application does not include any supporting materials or evidence to demonstrate Project Jupiter’s predicted water consumption. No technical documents are provided within the Application, beyond Project Jupiter’s one sentence and unsupported claim the project will rely on a “closed loop, non-evaporative cooling technology.” This cannot be said to sufficiently show that Project Jupiter will have no impact to the public water supply. Furthermore, the Application does not provide any specific estimate, supported by technical data and evidence, of the amount of public water Project Jupiter will rely upon and consume in both its construction and its operations. The Application simply states it will “limit[] ongoing water use to typical domestic usage.”³²

Vague promises, unsupported by any technical data, evidence, or further information, that Project Jupiter will not detrimentally impact and deplete the public water supply in Santa Teresa and Sunland Park, and all of Doña Ana County, is insufficient for the County to properly consider and make a fully-informed decision on whether Project Jupiter will significantly harm the public health, safety, and welfare. This is especially critical considering the Sunland Park and Santa Teresa communities’ decades-long fight for access to clean and safe drinking water, as well as the state of New Mexico’s ongoing drought and water scarcity crisis. The County cannot meaningfully and adequately consider Project Jupiter’s potential impacts to the public health, safety, and welfare, in a region and community already facing inadequate access to public water, when the Project Jupiter Application itself does not state exactly how much public water it will consume, nor provide any technical data or supporting information on how Project Jupiter intends to limit its public water consumption. Unless and until the Project Jupiter Application contains a specific estimate, supported by technical data and evidence, of its public water

²⁶ See Project Jupiter Application, Supplemental Information at 7.

²⁷ See *id.*

²⁸ See *id.*

²⁹ Doña Ana County Code § 56-8.D(4), A.

³⁰ See Project Jupiter Application at Attachment 1:7.

³¹ See Project Jupiter Application, Supplemental Information at 7.

³² See *id.*

consumption during both its construction and its operations, as well as any and all technical data, factual evidence, and supporting documentation of how Project Jupiter will limit its water consumption, Doña Ana County cannot properly consider the extent to which Project Jupiter will harm the public health, safety, and welfare of Sunland Park, Santa Teresa, and all of Doña Ana County.³³

Because the Project Jupiter Application is incomplete, Doña Ana County cannot fulfill its obligation, as mandated by the Doña Ana County Code, to make an informed decision on whether the issuance of the IRBs is within the County's and the public's interest.³⁴ Unless and until the Project Jupiter applicant submits a complete and thorough application, which includes all the necessary technical data, factual information, and supporting materials as described above, the County cannot issue an IRB and remain in compliance with its own Code. Thus, Community demands the Doña Ana County Board of Commissioners deny the Project Jupiter Application for the issuance of IRBs, and stay any future consideration of a similar application unless and until an application is submitted alongside all the necessary and critical technical data, factual evidence, and supporting materials.

II. The Project Jupiter Application is incomplete and does not meet the requirements for LEDA funding, pursuant to the New Mexico Local Economic Development Act, NMSA 1978 § 5-10-1, et seq.

Additionally, Community urges the County to deny the Project Jupiter Application for LEDA funding and stay any future consideration of a similar application unless and until an application is submitted including all the necessary and critical technical data, factual evidence, and supporting materials required for consideration by the Board in the Doña Ana County code. The New Mexico Legislature promulgated the New Mexico Local Economic Development Act, NMSA 1978 § 5-10-1, *et seq.*, “to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources.”³⁵ Thus, the Act authorizes Doña Ana County to provide grants for economic development projects.³⁶ However, the Act mandates that only “qualifying” entities can apply for and receive LEDA funding.³⁷ An applicant must submit a thorough and complete application to receive such assistance from the County.³⁸

Pursuant to the New Mexico Local Economic Development Act and the Doña Ana County code, the Doña Ana County Board of Commissioners cannot issue LEDA funding based on the current Project Jupiter Application. The Project Jupiter applicant is not a qualified entity under the Act, and even if the applicant was qualified, the Project Jupiter Application is incomplete and does not provide the information necessary for the County to properly evaluate the Application. For the foregoing reasons, Community demands the Doña Ana County Board of Commissioners deny the Project Jupiter Application for the issuance of LEDA funding, and stay any future consideration of a similar application unless and until an application is submitted by a

³³ Doña Ana County Code § 56-8.D(4), A.

³⁴ See Doña Ana County Code § 56-8.A.

³⁵ NMSA 1978 § 5-10-2(B).

³⁶ See NMSA 1978 § 5-10-6; *see also* Doña Ana County Code § 166-3 (Doña Ana County “Economic Development Plan Ordinance”).

³⁷ NMSA 1978 § 5-10-3(L).

³⁸ See Doña Ana County Code § 166-4; *see* NMSA 1978 § 5-10-9(B).

qualifying entity, and the application includes all the necessary and critical technical data, factual evidence, and supporting materials.

1. The Project Jupiter applicant is not a qualified entity under the Act.

As mandated by New Mexico state law, only “qualifying” entities can apply for and receive LEDA funding.³⁹ Community again notes that the Project Jupiter applicant, according to the Application, is divided into three entities for the project development, all of which are marked “TBD (to be disclosed to the County prior to the statutory notice period for the project IRB Inducement Resolution)” – meaning the applicant for Project Jupiter have yet to be identified, and the sub-entities have yet to be secured.⁴⁰ The Application states that the project scope “includes development of a hyperscale, artificial intelligence (AI) data center campus, co-located microgrid (a self-contained energy system consisting of power generation and battery storage), infrastructure for power generation, and related assets to serve the Project.”⁴¹ Project Jupiter’s scope does not fall into any one of the nine qualifying categories under the Act. Project Jupiter, under its current project scope described in its Application, will not manufacture, process, assemble, store, warehouse, distribute, or sell products.⁴² It is not a tribal nation or pueblo; telecommunications sales enterprise; a farmers’ market; a metropolitan redevelopment project; a cultural facility; nor a retail business.⁴³

While a hyperscale, artificial intelligence data center campus could be considered a business that supplies services to the public,⁴⁴ the New Mexico Economic Development Department (“NMEDD”), responsible for the implementation of the Act,⁴⁵ defines a qualifying business as an “economic base employer,” or “an employer who is deemed eligible for in-plant training assistance by the Economic Development Department’s Job Training Incentive Program.”⁴⁶ NMEDD further states that a non-qualifying entity under the Act includes “[a] business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but not including businesses primarily engaged in the sale of goods or commodities at retail.”⁴⁷ Even though the Project Jupiter Application fails to define who the Project intends to provide services to, Project Jupiter’s proposed hyperscale, artificial intelligence data center campus, according to its own website, concludes its data centers will help provide internet and storage services for the

³⁹ NMSA 1978 § 5-10-3(L).

⁴⁰ See Project Jupiter Application, Supplemental Information at 1; see Criteria 1 Section in this comment for further discussion.

⁴¹ See *id.* at 2.

⁴² NMSA 1978 § 5-10-3(L).

⁴³ *Id.*

⁴⁴ See *id.*

⁴⁵ See NMSA 1978 § 5-10-3(D).

⁴⁶ See *Local Economic Development Act (LEDA)*, New Mexico Economic Development Department, <https://edd.newmexico.gov/business-development/edd-programs-for-business/finance-development/leda/> (last accessed Sept. 6, 2025).

⁴⁷ See *id.*

public's constant use of "emergency services, apps, games, websites and videos."⁴⁸ Thus, Project Jupiter will be, apparently, primarily supplying its services broadly to the general public, establishing the Project as a non-qualifying entity under the Act. Because Project Jupiter is not a qualifying entity under the Act, Project Jupiter is not eligible for LEDA funding and the County must deny the Project Jupiter Application for LEDA funding.

2. The Project Jupiter Application is incomplete and cannot inform the County's decision on LEDA funding.

In order for a local or regional government to provide local support for LEDA funding, the Act requires that the local government's evaluation of an application be based on "the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application."⁴⁹ The Doña Ana County Code further requires an applicant's proposal for LEDA funding to "describe the proposed project, including the names and addresses of persons with an interest in the project, the number and types of jobs to be created, wages and benefits associated with the jobs to be created, the type and amount of assistance sought from the County, and all other information requested by the County."⁵⁰

Even if Project Jupiter were a qualifying project for LEDA funding, which it is not, the Project Jupiter Application is incomplete and does not satisfy the baseline requirements set forth by the Act and the Doña Ana County Code. The Application does not include the names and addresses of persons with an interest in the project. As discussed above, the Application does not name the entities "set" to carry out the proposed development, no sub-entities have been named or even selected, and no tenants have been secured for Project Jupiter. The Application thus does not and cannot include the names and addresses of persons with an interest in the project. The Project Jupiter Application, in its current state, fails to include any requisite materials, including names, contractual agreements, or supporting documentation. Moreover, no supporting documentation or materials exist regarding the financial and management stability of the applicant. Thus, the County cannot properly consider the Application, as required by the Act.

Moreover, the Application does not specify the amount of LEDA assistance sought from the County, as the Project Jupiter applicant appears to have submitted the same application for IRBs as it did for LEDA funding.⁵¹ The Application does not so much as mention LEDA funding, let alone specify the amount of LEDA funding requested, the financial and management

⁴⁸ See Project Jupiter Together, <https://projectjupitertogether.com/> (last accessed Sept. 6, 2025) ("People use the internet all the time—day and night. That means data centers need power around the clock, so your emergency services, apps, games, websites and videos never shut off").

⁴⁹ See NMSA 1978 § 5-10-9(B).

⁵⁰ Doña Ana County Code § 166-4.

⁵¹ See Attachment 1 [NMELC IPRA Request and County's responsive records].

stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.

Additionally, the Project Jupiter Application, once again, does not include the necessary technical data, evidence, or supporting materials necessary for the Doña Ana County Board of Commissioners to properly consider the Application for LEDA funding. While the Application purportedly provides the number and types of jobs to be created and wages and benefits associated with the jobs to be created, the Project Jupiter Application does not provide any supporting information, documentation, materials, or other evidence related to the claimed numbers it has provided the County. The Application also fails to include any form of cost-benefit analysis or Economic Impact Assessment.⁵²

Finally, and most importantly, the Project Jupiter Application does not demonstrate, nor even speak to, any sort of commitment to or investment in the community. The Application merely provides a projected number of jobs, based purely on speculation, without any additional information, evidence, technical data, or other guarantee. Moreover, the Application does not show that any potential employment created by Project Jupiter will be offered to or prioritized for local residents and community members. The Application does not include any technical data, evidence, or supporting materials to demonstrate that Project Jupiter will not deplete the public water supply, or provide any mention of the Project's commitment to protecting the public health, safety, and welfare. Project Jupiter is a proposed project that was not created by and for the communities of Sunland Park and Santa Teresa, nor the larger Doña Ana County community, and its Application does not provide any sort of information, data, materials, or evidence to the contrary.

The Project Jupiter Application, in its entirety, is incomplete and cannot satisfy the requirements for the County's issuance of IRBs or LEDA funding. Accordingly, for the aforementioned reasons, Community demands the Doña Ana County Board of Commissioners deny the Project Jupiter Application for the issuance of IRBs and LEDA funding, and stay any future consideration of a similar application unless and until an application is submitted alongside all the necessary and critical technical data, factual evidence, and supporting materials.

RESPECTFULLY SUBMITTED on this 8th day of September, 2025, by:

EMPOWERMENT CONGRESS
OF DOÑA ANA COUNTY

NEW MEXICO ENVIRONMENTAL
LAW CENTER

⁵² See Project Jupiter Application, Appendix A at 2; *see also* Criteria 3 Section of this comment for further discussion.

/s/ Daisy A. Maldonado

Daisy A. Maldonado
Director of Empowerment Congress
3880 Foothills Rd Ste A
Las Cruces, NM 88001
Tel.: (575) 268-3377
Tel.: (575) 642-5683
daisy@empowernm.org

/s/ Kacey J. Hovden

Kacey J. Hovden
Maslyn K. Locke
P.O. Box 12931
Albuquerque, NM 87195
Tel.: (505) 989-9022
Fax.: (505) 629-4769
khovden@nmelc.org
mlocke@nmelc.org