

**EXCERPT FROM A REGULAR MEETING
OF THE CITY COUNCIL OF THE
CITY OF DEMING, NEW MEXICO**

The City Council of the City of Deming (the "Council" and the "City," respectively), met in regular open session in full conformity with law and the rules and regulations of the City Council, at 309 S Gold Ave in Deming, New Mexico, being a regular meeting place of the Council for such meetings, on Tuesday, February 21, 2023, at the hour of 5:30 p.m., at which meeting there were present and answering the roll call the following:

PRESENT:

Benny L. Jasso, Mayor
Monica Topham, Mayor Pro Tem
Irmaisela Rodriguez, Councilor
Alex Valdespino, Councilor
Joe F. Milo, Councilor

ABSENT:

ALSO
PRESENT:

Laura G. Holquin, Finance Director
Mary Jo Valdez, Municipal Clerk

Member Councilor Rodriguez thereupon introduced and moved the adoption of the following Ordinance.

CITY OF DEMING, NEW MEXICO
ORDINANCE 1316

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF DEMING, NEW MEXICO, GENERAL OBLIGATION BONDS, SERIES 2023, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000 FOR THE PURPOSES OF (1) INSTALLING AND REPAIRING STREET LIGHTS, CONSTRUCTING, REPAIRING, AND OTHERWISE IMPROVING MUNICIPAL ALLEYS, STREETS, PUBLIC ROADS AND BRIDGES OR ANY COMBINATION OF THESE PURPOSES; (2) FUND A DEBT SERVICE RESERVE FUND, AND (3) PAY COSTS OF ISSUANCE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF, AND SECURITY FOR, PAYMENT; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE SALE OF THE BONDS PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE BONDS; RATIFYING ACTION PREVIOUSLY TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUE AND SALE OF THE BONDS.

Capitalized terms used in the following preambles are defined in Section 1 of this Bond Ordinance, unless the context requires otherwise.

WHEREAS, at the general obligation bond election held for City of Deming (the "City"), State of New Mexico, on the 8th day of November, 2022, the electors of the City authorized the City Council of the City (the "Council"), to contract bonded indebtedness on behalf of the City in the total amount not to exceed \$5,000,000 for the purpose of installing and repairing street lights, constructing, repairing, and otherwise improving municipal alleys, streets, public roads and bridges or any combination of these purposes, (the "Election"), and upon the credit thereof by issuing general obligation bonds of the City to secure funds for the following purposes, in the following amounts:

Installing and repairing street lights, constructing, repairing, and otherwise improving municipal alleys, streets, public roads and bridges, or any combination of these purposes.

Amount Authorized at Election	Amount Previously Issued	Amount to be Issued
\$5,000,000	\$0.00	\$5,000,000

WHEREAS, the Council desires to authorize the issuance and sale of the Series 2023 Bonds;
and

WHEREAS, it is essential to proceed with the City's capital improvement projects by issuing

and selling the Series 2023 at either a competitive sale or a private sale, fund the Series 2023 Bond Projects; and

WHEREAS, it is in the best interests of the City to sell the Series 2023 Bonds to the Purchaser in accordance with the terms set forth in the Bond Ordinance as supplemented by the Sale Certificate; and

WHEREAS, the Council has determined and does hereby determine that the Bonds shall be issued at this time under the authority of the New Mexico Constitution and applicable law as hereinafter set forth, and desires to fix the form and details of the Bonds and to provide for the levy of taxes for the payment of the principal of and interest on the Bonds; and

WHEREAS, the City expects to receive an offer to purchase the Bonds, potentially in one or more series, pursuant to a Bond Purchase Agreement, which will provide for an underwriting discount not to exceed 3% of the par amount of the Bonds and an original issue discount not to exceed 6% of the par amount of the Bonds; and

WHEREAS, the net effective interest rate on the Bonds is not more than ten percent (10%) a year; and

WHEREAS, no action or suit has been commenced by any person or corporation contesting the validity of any of the proceedings directed toward the issuance and sale of the Bonds heretofore taken by the Council and the officers of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DEMING:

Section 1. Definitions. As used in ordinance and any ordinance or resolution amendatory hereof or supplemental hereto, or relating hereto:

“Act” means Sections 3-30-1 to 3-30-9 and Sections 6-14-8 to 6-14-11 NMSA 1978, as amended, all enactments of the Council, including this Bond Ordinance, relating to the issuance of the Bonds.

“Authorized Officer” means the Mayor, Administrator-Manager, Clerk or other officer or employee of the City when designated by a Certificate signed by the Mayor of the City from time to time.

“Bond Counsel” means an attorney or firm of attorneys nationally recognized as bond counsel.

“Bond Fund” has the meaning specified in Section 17.

“Bond Insurance Policy” means the financial guaranty insurance policy, if any, issued by the Bond Insurer insuring the payment when due of the principal and interest due on the Bonds as provided therein.

“Bond Insurer” means the municipal bond insurer, if any, as identified in the Sale Certificate.

“Bond Ordinance” means this City Ordinance duly adopted, as amended or supplemented from time to time.

“Bond Purchase Agreement” means the Bond Purchase Agreement by and between the City and the Purchaser relating to the sale of the Series 2023 Bonds to the Purchaser.

“Bonds” means the “City of Deming, New Mexico General Obligation Bonds, Series 2023” issued in one or more series.

“City” means the municipal body corporate and politic known as the City of Deming, New Mexico.

“Commitment” means the commitment from a Bond Insurer to the City for a Bond Insurance Policy.

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

“Council” means the City Council of the City.

“Event of Default” has the meaning assigned in Section 22.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including the fees, premiums, compensation, costs and expenses paid or to be paid to the Purchaser and attorneys’ fees.

“Federal Securities” means direct obligations of, or obligations the timely payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Fiscal Year” means the 12 months beginning on the first day of July of each calendar year and ending on the last day of June of the next calendar year, but it may mean any other 12-month period which any appropriate authority may hereafter establish for its Fiscal Year.

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

“Independent Counsel” means an attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of the City.

“Insured Bank” means a bank that is a member of the Federal Deposit Insurance Corporation.

“Insured Bonds” means any Bonds the payments on which are insured by a Bond Insurance Policy.

"Interest and Sinking Fund" means the fund created herein in Section 17 for the payment of debt service on the Series 2023 Bonds.

"Interest Payment Date" means August 1 and February 1 of each year (or if such day is not a Business Day, then the next succeeding Business Day), commencing on the date specified in the Sale Certificate.

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

"Outstanding" when used with reference to the Bonds and as of any particular date, means all Bonds executed by the City and authenticated by the Registrar except: (i) any Bonds cancelled or fully paid on or before such date; (ii) any Bond in lieu of or in substitution for which another Bond has been delivered pursuant to this Bond Ordinance; (iii) any Bond for the payment or redemption of which funds or permitted securities in the necessary amount have theretofore been deposited with the Paying Agent (whether upon or prior to the maturity or redemption date of such Bond); and (iv) for the sole purpose of determining the percentage of Owners consenting to any amendment to this Bond Ordinance or authorizing the exercise of any remedy hereunder, any Bonds owned by the City. For all other purposes, Bonds owned by the City which are not described in clauses (i), (ii) or (iii) shall be treated as Outstanding.

"Owner" means the registered owner of any Bond.

"Paying Agent" means the City Treasurer (or successor in function), as agent for the City for the payment of the principal of and interest and premium, if any, on the Bonds.

"Payment Date" means any date upon which any payment of principal of or interest on any Bond is scheduled to be made.

"Permitted Investments" means securities which are at the time legal investments of the City for the money to be invested, as applicable, including but not limited to the following if permitted by law: (i) direct obligations of, or obligations fully guaranteed by the United States of America or instruments evidencing ownership interests in those obligations or in specified portions of the principal of or interest on those obligations; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or Standard & Poor's Rating Group; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1 NMSA 1978, and operated, maintained and invested by the office of the State Treasurer.

"Preliminary Official Statement" or "Official Statement" means the disclosure document to be used by the Purchaser in connection with the sale of the Bonds to the public.

"Project" means the certain municipal capital improvement projects including, but not limited to, installing and repairing street lights, constructing, repairing, and otherwise improving municipal alleys, streets, public roads and bridges, or any combination of these purposes, for the benefit of the City and its residents.

"Project Fund" has the meaning specified in Section 17.

“Property Tax Revenue Fund” has the meaning specified in Section 17.

“Property Tax Revenues” means the amounts of money derived from the City’s ad valorem taxes levied on all taxable property within the city, levied without limit as to rate or amount.

“Purchaser” means the original purchasers of the Bonds as identified in the Sale Certificate.

“Registrar” means the City Treasurer (or successor in function), as registrar and transfer agent for the Bonds.

“Regular Record Date” means the 15th day of the calendar month (whether or not a business day) preceding each regularly scheduled interest payment date on the Bonds.

“Reserve Fund” has the meaning specified in Section 17.

“Reserve Fund Insurance Policy” means any policy of insurance, surety bond, letter of credit or other financial instrument issued to the City, the proceeds of which shall be used to prevent deficiencies in the payment of the principal of or interest on the Bonds resulting from insufficient amounts being on deposit in the Bond Fund to make the payment of principal of and interest on the Bonds as the same become due. Each policy shall be written by a bank, insurance company or any financial institution experienced in insuring or guaranteeing municipal bonds whose policies of insurance, surety bond, letter of credit or other financial instrument would not adversely affect the rating of the Bonds by Moody’s and/or Standard & Poor’s to the extent that the Bonds are to be so rated and provided that at the time of the issuance of such policy such bank, insurance company or any financial institution shall have received the highest policy claims rating accorded insurers by the A.M. Best Company or any comparable service, if applicable to the provider of the Reserve Fund Insurance Policy, and either of the two highest Rating Categories of Moody’s and Standard & Poor’s to the extent that each rating agency provides such a rating and is then rating the Bonds.

“Reserve Requirement” means an amount which is equal to the lesser of (i) ten percent of the proceeds of the Bonds, (ii) the maximum annual debt service on the Bonds, or (iii) 125% of the average annual debt service on the Bonds.

“Sale Certificate” means one or more certificates executed by the Mayor or Administrator-Manager dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund or a debt service reserve account, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the federal tax status of the Bonds; and (x) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Bond Ordinance.

“Series Date” means the date of original issuance of each series of Bonds.

“Special Record Date” means a special date fixed to determine the names and addresses of registered owners of the Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest thereon, all as further provided in Section 6(B).

“State” means the State of New Mexico.

Section 2. Ratification. All action heretofore taken (not inconsistent with the express provisions of this Bond Ordinance) by the Council and officers of the City directed toward the Project, and toward the authorization, sale and issuance of the Bonds is ratified, approved and confirmed.

Section 3. Authorization of Project. The Project and the method of financing the Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds. The Project is found and declared to be authorized pursuant to Section 3-30-5 NMSA 1978.

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

A. Moneys available for the Project from all sources other than the issuance of revenue bonds are not sufficient to defray the cost of the Project.

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

C. The issuance of the Bonds, in one or more series, pursuant to the Act, to provide funds for the financing of the Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

D. The net effective interest rate on the Bonds, as set forth in the Sale Certificate, shall be less than 10% per annum, the maximum rate permitted by State law.

E. The underwriting discount shall not exceed 3% of the par amount of the Bonds and an original issue discount shall not exceed 6% of the par amount of the Bonds.

F. The final maturity of the Bonds shall not exceed twenty years from the date of issuance of the Bonds.

G. The Project is needed to meet the needs of the City and its residents.

Section 5. Authorization of Bonds. The Bonds were authorized at the Election held within the City on November 8, 2022. The Bonds shall constitute the general obligation debt of the City, payable from general ad valorem taxes which shall be levied without limitation as to the rate or amount. The full faith and credit of the City shall be, and hereby is, irrevocably pledged to the payment of the principal of and interest on the Bonds. The issuance, sale and delivery of the Bonds are hereby authorized. The Project is authorized and approved. The Bonds shall be sold to the Purchaser at a negotiated or public sale, a sale of the City's bonds to investors by a bond underwriter or a private placement of the bonds with a bank, financial institution, state instrumentality, the New

Mexico Finance Authority or other entity or person, with interest rates, maturity dates and other terms that are satisfactory to the City, pursuant to the terms in the Sale Certificate.

Section 6. Bond Details.

A. Basic Details. The form, terms, and provisions of the Series 2023 Bonds, as set forth herein, are hereby approved with only such changes there in as are not inconsistent with this Bond Ordinance and the Sale Certificate. The Bonds shall be dated as of the date of delivery (the "Series Date"), will be issued in one series and shall consist of bonds numbered consecutively from R-1 upward, issuable in the denomination of \$5,000 each or integral multiples thereof (provided that no individual bond will be issued for more than one maturity); shall bear interest from their dated date until maturity at a rate of interest not to exceed ten percent (10%) per annum, as set forth in the Sale Certificate, payable to the registered owner thereof, or registered assigns, on August 1, 2023, and semiannually thereafter on February 1 and August 1 in each year in which the Bonds are outstanding; and shall mature on August 1 of each year set forth above.

B. Payment. The principal of and interest on the Bonds due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the City Treasurer, as "registrar/paying agent" (such entity and any successor thereto, the "Registrar/Paying Agent") for the Bonds, upon maturity and upon presentation and surrender thereof at the principal offices of the Registrar/Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by the Bond until the principal thereof is paid in full. Payment of interest on the Bonds (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof on the Record Date (defined below) at the address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any interest payment date shall mean the fifteenth day of the month preceding the interest payment date. The person in whose name any Bond is registered on any Record Date with respect to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such interest payment date; but interest on any Bond which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Bonds as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

Section 7. Prior Redemption.

A. Redemption. The Bonds are subject to redemption at the option of the City prior to their scheduled maturity, in whole or in part, on any day beginning ten years after the date of original issuance of the Bonds, with funds derived from any available and lawful source, and the City shall designate the amount that is to be redeemed, and if less than a whole maturity is to

be redeemed, the City shall direct the Paying Agent/Registrar to call by lot Bonds, or portions thereof within such maturity, for redemption (provided that a portion of a Bond may be redeemed only in an integral multiple of \$5,000), at the redemption price of par, plus accrued interest to the date fixed for prepayment or redemption.

B. Notice by the City. Unless waived by the Registrar, at least forty-five (45) days prior to any date selected by the City for prior redemption of any of the Bonds, the City shall give written instructions to the Registrar (and, if the Registrar is not also the Paying Agent, to the Paying Agent) with respect to such prior redemption.

C. Notice by the Registrar. Additionally, notice of redemption of the Bonds will be given by the Registrar/Paying Agent by sending a copy of such notice electronically or by first-class, postage prepaid mail not more than sixty (60) days and not less than thirty (30) days prior to the redemption date to the address shown as of the fifth day prior to the mailing of notice on the registration books by the Registrar/Paying Agent. The City shall give the Registrar/Paying Agent notice of the Bonds to be called for redemption at least fifteen (15) days prior to the date that the Registrar/Paying Agent is required to give owners notice of redemption specifying the Bonds and the principal amount to be called for redemption and the applicable redemption dates. The Registrar/Paying Agent's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. The notice will specify the number or numbers and maturity date or dates of the Bonds to be redeemed (if less than all are to be redeemed) the principal amount of any Bond to be redeemed in part, the date fixed for redemption, and that on such redemption date there will become due and payable upon each Bond or part thereof to be redeemed at the office of the Registrar/Paying Agent the principal amount thereof to be redeemed plus accrued interest, if any, to the redemption date and that from and after such date interest will cease to accrue on the principal amount redeemed. Such notice may be a conditional notice of redemption insofar as the money or securities necessary to pay the redemption price of the Bonds are not required to be on deposit with the Registrar/Paying Agent prior to the giving of notice of optional redemption of the Bonds. If notice is given in the manner provided above, the Bond or Bonds or part thereof called for redemption will become due and payable on the redemption date designated and if an amount of money sufficient to redeem all Bonds called for redemption is on deposit with the Registrar/Paying Agent on the redemption date, the Bonds or part thereof to be redeemed shall be deemed to be not outstanding and will cease to bear or accrue interest from and after such redemption date. Upon presentation of a Bond to be redeemed at the office of the Registrar/Paying Agent on or after the redemption date, the Registrar/Paying Agent will pay such Bond, or portion thereof called for redemption.

D. Conditional Redemption. If money or Federal Securities sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption or defeasance, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent by 2:00 p.m. on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair by the City, and the Registrar shall give notice, in

the manner in which the original notice of optional redemption was given, that such money was not received. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been redeemed.

E. Other Redemption Details. The notice required by Section 7(D) shall specify the number or numbers of the Bond or Bonds or portions thereof to be so redeemed (if less than all are to be redeemed); and all notices required by this Section shall specify the date fixed for redemption, and shall further state that on such redemption date there shall become and be due and payable upon each \$5,000 unit of principal so to be redeemed at the office of the Paying Agent the principal thereof and the applicable prior redemption premium thereon (if any), and that from and after such date interest shall cease to accrue. Accrued interest to the redemption shall be paid by check or draft mailed to the Owner (or by alternative means if so agreed to by the Paying Agent and the Owner). Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated; and upon presentation thereof at the office of the Paying Agent, the City shall pay the Bond or Bonds so called for redemption and the applicable prior redemption premium (if any). In the event that only a portion of the principal amount of a Bond is so redeemed, a new Bond representing the unredeemed principal shall be duly completed, authenticated and delivered by the Registrar to the Owner pursuant to Section 10 and without charge to the Owner thereof.

Section 8. Negotiability. Subject to the provisions specifically made or implied herein, the Bonds shall be fully negotiable, and shall have all the qualities of negotiable paper, and the Owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 9. Execution.

A. Method of Execution. Each Bond shall be executed by the manual or facsimile signature of the Mayor under the seal of the City, each Bond shall be executed and attested with the manual or facsimile signature of the City Clerk; and each Bond shall be authenticated by the manual signature of an authorized officer of the Registrar as hereafter provided. The Bonds bearing the manual or facsimile signatures of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the City (subject to the requirement of authentication by the Registrar) notwithstanding that before the delivery thereof and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose manual or facsimile signatures appear thereon shall have ceased to fill their respective offices.

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

Section 10. Registration, Transfer, Exchange, Replacement and Cancellation.

A. Registration Books; Transfer and Exchange. Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bonds at the office of the Registrar, duly endorsed for transfer or accompanied by an assignment duly

executed by the Owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at office of the Registrar for an equal aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds that the Owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the Owner or any transferee, but the Registrar may require the payment by the Owner of any Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

B. When Transfer or Exchange Not Required. The Registrar shall not be required: (i) to transfer or exchange all or a portion of any Bond subject to prior redemption during the period of fifteen 15 days next preceding the mailing of notice to the Owners calling any Bonds for prior redemption pursuant to Section 7; or (ii) to transfer or exchange all or a portion of a Bond after the mailing to registered owners of notice calling such Bond or portion thereof for prior redemption.

C. Payment to Registered Owners. The person in whose name any Bond shall be registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest as is provided in Section 6(B), and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the Owner thereof or the Owner's legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Replacement Bonds. If any Bond is lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond has matured, the Paying Agent may pay such Bond in lieu of replacement.

E. Delivery of Bond Certificates to Registrar. The officers of the City are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.

F. Cancellation of Bonds. Whenever any Bond is surrendered to the Paying Agent or Registrar upon payment thereof, or for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled by the Paying Agent or the Registrar, as the case may be, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or the Registrar, as the case may be, to the City.

Section 11. Book-Entry. Except as set forth in this Bond Ordinance, the Bonds may be issued in book-entry form with no physical distribution of Bonds made to the public. The Depository Trust Company or any successor securities depository ("DTC") may act as securities depository for the Bonds. A single certificate for each maturity of the Bonds may be issued to DTC and immobilized in its custody. The book-entry system shall evidence ownership of the Bonds in

principal amounts of \$5,000 or integral multiples thereof, with transfers of ownership effected on the records of DTC and its participants (the "Participants") pursuant to rules and procedures established by DTC and the Participants. As a condition to delivery of the Bonds, the Purchaser may, immediately after acceptance of delivery thereof, deposit the Bonds with DTC, registered in the name of DTC or its nominee. Principal and interest may be paid to DTC or its nominee as registered owner of the Bonds. Transfer of principal and interest payments to the Participants shall be the responsibility of DTC; transfer of principal and interest payment to beneficial owners of the Bonds (the "Beneficial Owners") by the Participants shall be the responsibility of the Participants and other nominees of the Beneficial Owners maintaining a relationship with the Participants. Neither the City, the Registrar nor the Paying Agent shall be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, the Participants or persons acting through the Participants. If (i) the Bonds are not eligible for DTC services, (ii) DTC determines to discontinue providing its services with respect to the Bonds, or (iii) the Registrar determines that a continuation of the system of book-entry transfers through DTC is not in the best interest of the Registrar or the Beneficial Owners, the Registrar shall either identify another qualified securities depository or cause physical Bonds to be delivered to the Beneficial Owners or their nominees and thereupon the Beneficial Owners or their nominees, upon authentication of the Bonds and registration of the Bonds in the Beneficial Owners' or nominees' name, shall become the Owners of the Bonds for all purposes. Upon the occurrence of any such event, the Registrar shall mail an appropriate notice to DTC for notification to the Participants and the Beneficial Owners of the substitute depository or the issuance of Bonds to the Beneficial Owners or their nominees, as applicable. All notices and payments addressed to DTC shall contain the information required by, and sent as set forth in, the Letter of Representation executed by the City. Notices of redemption shall be given to DTC as provided in such Letter of Representation.

Section 12. Successor Registrar/Paying Agent. If the Registrar/Paying Agent initially appointed hereunder shall resign, or if the City shall reasonably determine that the Registrar/Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor registrar/paying agent. Every such successor registrar/paying agent shall be an independent third-party registrar/paying agent bank or trust company located in and in good standing in the United States and having a shareholder's equity (e.g., capital stock, surplus and undivided profits), however denominated, of not less than \$10,000,000.

Section 13. Forms of Bonds, Certificate of Authentication and Assignment. The Bonds and the related Certificate of Authentication and Form of Assignment shall be in substantially the following form:

[Form of Bond]

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF NEW MEXICO
CITY OF DEMING
GENERAL OBLIGATION BONDS,
SERIES 2023

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ Dollars

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>SERIES DATE</u>
% per annum	, 2023	, 2023

The Council of the City of Deming, County of Luna, New Mexico (the "Council"), on the faith, credit and behalf of the City of Deming, County of Luna, New Mexico (the "City"), for value received, hereby promises to pay to the registered owner named above, or registered assigns, the principal amount hereof on the Maturity Date and to pay interest on the principal amount at the Interest Rate on August 1, 2023, and thereafter on each February 1 and August 1 of each year (the "Interest Payment Date") from the Series Date to its maturity. The principal of the bonds of the series of which this is one (the "Bonds") and interest due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the City Treasurer, as "registrar/paying agent" (such entity and any successor thereto, the "Registrar/Paying Agent") for the Bonds, upon maturity and upon presentation and surrender thereof at the principal offices of the Registrar/Paying Agent. If any bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by the bond until the principal thereof is paid in full. Payment of interest on the Bonds (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each Interest Payment Date (or, if such Interest Payment Date is not a business day, on or before the next succeeding business day), to the registered owner thereof on the Record Date (defined below) at the address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any Interest Payment Date shall mean the fifteenth day of the month immediately preceding the Interest Payment Date. The person in whose name any Bond is registered on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable thereon on such Interest Payment Date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; but interest on any bond which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such bond is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Bonds as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

The Bonds are fully registered and are issuable in denominations of \$5,000 and any integral multiple thereof (provided that no individual bond may be issued for more than one maturity).

The series of Bonds of which this bond is one is limited to the total principal amount not

to exceed \$5,000,000 of like tenor except as to number, denomination, maturity date, and interest rate, issued by City of Deming, New Mexico, shall be applied for the purpose of installing and repairing street lights, constructing, repairing, and otherwise improving municipal alleys, streets, public roads and bridges, or any combination of these purposes, under the authority of and in full conformity with the Constitution and laws of the State of New Mexico (particularly Sections 3-30-1 through 3-30-9 NMSA 1978, the provisions of Sections 6-15-1 through 6-15-22 NMSA 1978, and acts amendatory and supplemental thereto), and pursuant to an award by the Council duly adopted and made a law of the City prior to the issuance of this bond (the "Bond Ordinance").

The Bonds maturing on and after _____ may be redeemed prior to their scheduled maturities on _____ or on any date thereafter.

Notice of redemption of the Bonds will be given by the Registrar/Paying Agent by sending a copy of such notice electronically or by first-class, postage prepaid mail not less than thirty (30) days prior to the redemption date to the address shown as of the fifth day prior to the mailing of notice on the registration books by the Registrar/Paying Agent. The City shall give the Registrar/Paying Agent notice of the Bonds to be called for redemption at least fifteen (15) days prior to the date that the Registrar/Paying Agent is required to give owners notice of redemption specifying the Bonds and the principal amount to be called for redemption and the applicable redemption dates. The Registrar/Paying Agent's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. The notice will specify the number or numbers and maturity date or dates of the Bonds to be redeemed (if less than all are to be redeemed) the principal amount of any Bond to be redeemed in part, the date fixed for redemption, and that on such redemption date there will become due and payable upon each Bond or part thereof to be redeemed at the office of the Registrar/Paying Agent the principal amount thereof to be redeemed plus accrued interest, if any, to the redemption date and that from and after such date interest will cease to accrue on the principal amount redeemed. Such notice may be a conditional notice of redemption insofar as the money or securities necessary to pay the redemption price of the Bonds are not required to be on deposit with the Registrar/Paying Agent prior to the giving of notice of optional redemption of the Bonds. If notice is given in the manner provided above, the Bond or Bonds or part thereof called for redemption will become due and payable on the redemption date designated and if an amount of money sufficient to redeem all Bonds called for redemption is on deposit with the Registrar/Paying Agent on the redemption date, the Bonds or part thereof to be redeemed shall be deemed to be not outstanding and will cease to bear or accrue interest from and after such redemption date. Upon presentation of a Bond to be redeemed at the office of the Registrar/Paying Agent on or after the redemption date, the Registrar/Paying Agent will pay such Bond, or portion thereof called for redemption.

The Registrar/Paying Agent will maintain the books of the City for the registration of ownership of the Bonds. Upon the surrender for transfer of any bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new bond or bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal offices of the Registrar/Paying Agent for an equal aggregate principal amount of bonds of other authorized denominations, and of the same maturity, series and interest rate. The

Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the bond to be exchanged a bond or bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment by the owner of any bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each interest payment date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each interest payment date but such transfer will not include transfer of interest payable on such interest payment date.

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

If any bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement bond or bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated bond shall have matured, the Registrar/Paying Agent may pay such bond in lieu of replacement.

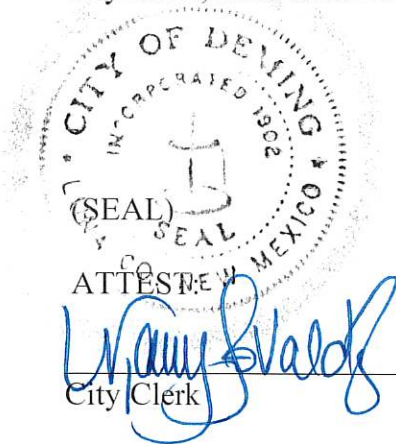
For the punctual payment of the principal of and interest on this bond as aforesaid and for the levy and collection of taxes in accordance with the statutes authorizing the issuance of this bond, the full faith and credit of the City is hereby irrevocably pledged.

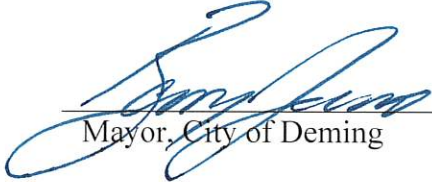
It is hereby certified, recited and warranted that all the requirements of law have been complied with by the proper officials of the City in the issuance of this bond; that the total indebtedness of the City, including that of this bond, does not exceed any limit of indebtedness prescribed by the Constitution or laws of the State of New Mexico; that issuance of this bond was duly authorized by the legally qualified voters of the City at a regular election held on November 8, 2023; that provision has been made for the levy and collection of annual taxes sufficient to pay the principal of and the interest on this bond when the same become due. This bond shall not be valid or obligatory for any purpose until the Registrar/Paying Agent shall have manually signed the certificate of authentication hereon.

The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The Mayor, City Clerk and any other officer of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and

other facts and circumstances relevant to the tax treatment of interest on the Bonds.

IN TESTIMONY WHEREOF, the Council of the City of Deming, County of Luna, New Mexico, constituting the governing board of the City, has caused the facsimile of the seal of the City to be hereto affixed and this bond to be signed and executed with the manual or facsimile signature of the Mayor and subscribed and attested with the manual or facsimile signature of the City Clerk, all as of the Series Date.





Mayor, City of Deming

[Form of Certificate of Authentication]

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

Date of Authentication
and Registration: _____, 2023

Registrar/Paying Agent

By: 

City Treasurer

[End of Form of Certificate of Authentication]

[Form of Assignment]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____ whose social security or tax identification number is _____ the within bond and irrevocably constitutes and appoints _____ attorney to transfer such bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

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

[End of Form of Assignment]

[End of Form of Bond]

Section 14. Delivery of Bonds and Initial Registration. When the Bonds have been duly executed, authenticated, registered and sold, the City shall deliver them to the Purchaser on receipt of the agreed purchase price. The Registrar shall initially register the Bonds in the name of the Purchaser as identified in the Sale Certificate.

Section 15. Tax Levies. There shall be levied on all taxable property in the City, at the time and in the manner provided by law, in addition to all other taxes, direct annual ad valorem taxes sufficient to pay the principal of and interest accruing on the Bonds promptly as the same shall become due. This Ordinance is hereby declared to be the certificate to the Board of County Commissioners of the County of Luna, as to the amount of taxes necessary to be levied for the purposes herein stated and such taxes shall be certified, levied and extended upon the tax rolls and collected in the same manner, at the same time and subject to the same penalties as general state and county taxes are certified, levied and collected. To the extent such taxes are not available for that purpose, the principal of and interest accruing on the Bonds shall be paid from any other lawfully available revenues for that purpose. Such taxes, when collected, shall be kept by the City in the City's Interest and Sinking Fund for the City's general obligation bonds to be to be used solely for the purpose of paying the principal of and interest on the City's general obligation bonds as the same become due or mature, and such taxes shall be included in the annual budget adopted and passed by the Council. Annually, the Council shall take all reasonable action to ensure the levy and collection of taxes by the governmental authority charged with legal responsibility to levy and collect taxes in amounts sufficient at the time to pay the principal of and interest on the Bonds. Nothing herein contained shall be so construed as to prevent the application of any other funds belonging to the City and available for that purpose, to the payment of the Bonds or the interest thereon, as the same become due and upon such payment the levy or levies of tax provided for in this Section may thereupon to that extent be diminished.

Section 16. Authorized Officers. The Mayor, Administrator-Manager, City Clerk, and other officers of the City be and they hereby are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance and the Sale Certificate, including, without limiting the generality of the foregoing, printing of the Bonds and such certificates as may be required by the Purchaser or bond counsel relating to the signing of the Bonds, the execution of such certificates, agreements and other documents as may be required for the issuance of the Bonds, the tenure and identity of City officials, the receipt of the purchase price of the Bonds from the Purchaser, the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity thereof, the absence and existence of factors affecting the exclusion of interest on the Bonds from gross income for federal income tax purposes and any other matter required for the sale and delivery of the Bonds to the Purchaser.

Section 17. Funds and Accounts. Funds and accounts relating to the Series 2023 Bonds proceeds and the payment of the Series 2023 Bonds shall be established by an Authorized Officer to be controlled and maintained by the City or its designee.

Section 18. Flow of Funds.

A. Property Tax Revenue Fund. So long as any of the Bonds are outstanding either as to principal or interest, or both, the City shall credit all ad valorem property tax revenues to the Property Tax Revenue Fund. The following payments shall be made from the Property Tax Revenue Fund.

B. Bond Fund.

(i) As a first charge on the Property Tax Revenue Fund, the following amounts shall be withdrawn from the Property Tax Revenue Fund and shall be credited to the Bond Fund:

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

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

C. Transfer of Money out of Bond Fund. Each payment of principal and interest becoming due on the Bonds shall be transferred from the Bond Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

D. Reserve Fund. Immediately upon the sale and delivery of the Bonds, a deposit in an amount equal to the Reserve Requirement will be made into the Reserve Fund from proceeds of the Bonds or, alternatively, the City may acquire a Reserve Fund Insurance Policy in an amount equal to all or part of the Reserve Requirement so that the combined amount of cash in the Reserve Fund and the amount of the Reserve Fund Insurance Policy is equal to the Reserve Requirement. Amounts on deposit in the Income Fund may be used by the City pursuant to this Paragraph F to make deposits into the Reserve Fund if required to meet the Reserve Requirement or to pay the annual premiums, reimbursement or other costs required by or associated with any Reserve Fund Insurance Policy. No payment need be made into the Reserve Fund so long as the moneys or the Reserve Fund Insurance Policy therein shall equal not less than the Reserve Requirement. The moneys in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, only to prevent deficiencies in the payment of the principal of and interest on the Bonds resulting from failure to deposit into the Bond Fund sufficient funds to pay the principal and interest as the same become due.

E. Termination Upon Deposits to Maturity. No payment shall be made into the Bond Fund or the Reserve Fund if the amounts (excluding any amount in the Reserve Fund represented by a Reserve Fund Insurance Policy) in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Bonds to their respective

maturities or applicable redemption dates, in which case moneys in the Bond Fund and the Reserve Fund in an amount at least equal to such respective principal and interest requirements shall be used solely to pay such obligations as the same accrue, and any moneys in excess thereof in the Bond Fund and the Reserve Fund may be used as provided below.

F. Payment from Other Sources. Notwithstanding any other provisions of this Bond Ordinance, the City may, in its sole discretion, choose to apply other legally available funds to the payment of the Bonds.

Section 19. General Administration of Funds. The funds designated in Section 17 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investments.

(i) Moneys in any fund not immediately needed may be invested as provided by state law and applicable federal statutes and regulations, provided that the Council and the City hereby covenant to the Purchaser and the owners of the Bonds from time to time that the City will make no use of the proceeds of the Bonds or any funds reasonably expected to be used to pay the principal of or interest on the Bonds which will cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code, as amended, or which would adversely affect the tax status of interest on the Bonds under the Code. This covenant is for the benefit of the Purchaser and the owners of the Bonds from time to time.

(ii) Moneys in the Reserve Fund shall be invested in accordance with paragraph (C) of this Section and moneys in any other fund or account not immediately needed may be invested in any Permitted Investment allowed by the laws of the State. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon, and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Administrator-Manager shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys in the Reserve Fund may be invested only in Permitted Investments with a maturity not greater than five years (except for investment agreements approved in writing by the Bond Insurer). The City shall annually, on or about February 1 of each year, value the Reserve Fund on the basis of the current fair market value of deposits and investments

credited to the Reserve Fund. For purposes of determining the amount on deposit in the Reserve Fund, any Reserve Fund Insurance Policy held by, or the benefit of which is available to, the City as security for the Bonds shall be deemed to be a deposit in the face amount of the policy or the stated amount of the credit facility provided, except that, if the amount available under a Reserve Fund Insurance Policy has been reduced as a result of a payment having been made thereunder or as a result of the termination, cancellation or failure to such Reserve Fund Insurance Policy and not reinstated or another Reserve Fund Insurance Policy provided, then, in valuing the Reserve Fund, the value of such Reserve Fund Insurance Policy shall be reduced accordingly. If, upon any valuation, the value of the Reserve Fund exceeds the Reserve Requirement, the excess amount shall be withdrawn and deposited into the Bond Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the Reserve Fund may be used to pay the final installments of principal and interest on the Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose.

If moneys have been withdrawn from the Reserve Fund or a payment has been made under a Reserve Fund Insurance Policy constituting all or a portion of the Reserve Fund, and deposited into the Bond Fund to prevent a default on the Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn, together with interest, if any, required under the terms of the Reserve Fund Insurance Policy, or so much as shall be required to restore the Reserve Fund to the Reserve Requirement and to pay such interest, if any.

The City may in part, or in whole, replace amounts in the Reserve Fund with a Reserve Fund Insurance Policy if the City receives written consent of the Bond Insurer prior to such replacement.

Section 20. Defeasance. Any Bond and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Bond") hereunder when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity, upon redemption, or other) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption), or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to a qualified depository for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Government Obligations which mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment (as verified by a certified or registered public accountant), and when proper arrangements have been made by the City with a qualified depository for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the ad valorem taxes herein levied and pledged as provided in this ordinance, and such principal and interest shall be payable solely from such money or Government Obligations.

Any moneys so deposited with the qualified depository may, at the written direction of the City, also be invested in Government Obligations, maturing in the amounts and times required to make payments when due on the Defeased Bonds, and all income from such Government

Obligations received by the qualified depository which is not required for the payment of the Defeased Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City for deposit in the interest and sinking fund for payment of principal and interest on the Bonds. The term "Government Obligations" means direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which may be United States Treasury Obligations such as its State and Local Government Series, which may be in book-entry form.

Section 21. Delegated Powers. The officers of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of the Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the summary of publication set out in Section 31 of the Bond Ordinance (with such changes, additions and deletions as they may determine), the distribution of material relating to the Bonds, the printing of the Bonds, the printing, execution and distribution of a Preliminary and final Official Statement, and the execution and delivery of the Bond Purchase Agreement, the Continuing Disclosure Undertaking and of such certificates as may be reasonably required by the Purchaser, the Bond Purchase Agreement, or bond counsel. The use and distribution of the Preliminary Official Statement and the Official Statement in connection with the sale of the Bonds to the public is hereby ratified, authorized, approved, and acknowledged.

The City Administrator-Manager, or his successor in interest, is hereby authorized and directed to make such changes or corrections to the procedures established in the Bond Ordinance relating to the times of day or the days on which actions are required to be taken, or the persons responsible for particular actions, the form of notice of the occurrence of events, the types and forms of actions required and other similar administrative matters which, in his judgment, are necessary and appropriate to accomplish the purposes of the Bond Ordinance. The Administrator-Manager, or his successor in interest or title, shall give notice of any such changes or corrections to all persons affected thereby, to Bond Counsel for the City and shall file with the City Clerk a certificate of such changes and corrections.

Pursuant to the Supplemental Public Securities Act, Section 6-14-8 et seq., NMSA 1978, the Mayor and Administrator-Manager are each hereby delegated authority to execute the Bond Purchase Agreement, the Sale Certificate and to determine any or all of the final terms of the Bonds, subject to the parameters and conditions contained in this Bond Ordinance. The Mayor or Administrator-Manager shall present the Sale Certificate to the Council in a timely manner, before or after delivery of the Bonds, at a regularly scheduled public meeting of the Council.

Section 22. Events of Default. Each of the following events is an "Event of Default":

A. Nonpayment of Principal. Any payment of the principal of any of the Bonds is not made when due and payable, either at maturity, by proceedings for prior redemption, or otherwise.

B. Nonpayment of Interest. Any payment of any installment of interest on the Bonds is not made when the same becomes due and payable or within thirty (30) days thereafter.

C. Default of any Provision. Any failure by the City to observe or perform any covenant, condition or agreement on its part to be observed or performed (other than as referred to in Section 22(A) or Section 22(B)), which failure continues for a period of sixty (60) days after

written notice specifying the failure and requesting that it be remedied has been given to the City by the Owners of twenty-five percent (25%) in principal amount of the Bonds then Outstanding.

D. Bankruptcy or Insolvency of City. (1) The City shall (a) apply for or consent to the appointment of or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the City or of all or a substantial part of its property, (b) commence a voluntary case under the Federal Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, or reorganization or (2) a proceeding or case shall be commenced, without application or consent of the City, in any court of competent jurisdiction seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the City, (b) appointment of a trustee, receiver, custodian, liquidator or the like of the City or of all or a substantial part of its assets, or (c) similar relief in respect of the City under any law relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts.

Section 23. Remedies Upon Default. Upon the occurrence and during the continuance of any Event of Default, the Owners of not less than twenty-five percent (25%) in principal amount of the Bonds then Outstanding, including but not limited to a trustee or trustees therefor, may proceed against the City, the Council, and its agents, officers and employees to protect and enforce the rights of any Owner under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for specific performance of any covenant or agreement contained herein or in an award or execution of any power herein granted for the enforcement of any power, legal or equitable remedy as such Owners may deem most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any registered owner, or to require the Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Bonds then Outstanding. The failure of any Owner to so proceed shall not relieve the City or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege or any Owner (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof.

Section 24. Duties Upon Default. Upon the occurrence and during the continuance of any Event of Default, the City shall do and perform all proper acts on behalf of and for the Owners to protect and preserve the security created for the payment of the principal of and interest on the Bonds promptly as the same become due. In the event the City fails or refuses to proceed as provided in this Section, the registered Owners of not less than twenty-five percent (25%) in principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of the Owners as hereinabove provided.

Section 25. Federal Tax Matters. The City covenants that it shall use, and shall restrict the use and investment of, the proceeds of the Series 2023 Bonds in such manner and to such extent as may be necessary so that (a) the Series 2023 Bonds shall not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Code, or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon shall not be treated as a preference item under Section 57 of the Code. The City further covenants (a) that it shall take or cause to be taken such actions that may be required of it for the interest on the Series 2023 Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) that it shall not take or authorize to be taken any actions that would adversely affect that exclusion, and (c)

that it, or persons acting for it, shall, among other acts of compliance, (i) apply the proceeds of the Series 2023 Bonds to the governmental purposes of the borrowings, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments or payments of alternative amounts in lieu of rebate to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

Authorized Officers are authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Series 2023 Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Series 2023 Bonds or interest thereon or assisting in the compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Series 2023 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcripts of the proceedings for the Series 2023 Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Series 2023 Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Series 2023 Bonds.

Section 26. Severability. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 27. Repealer Clause. All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution or part of any ordinance or resolution heretofore repealed.

Section 28. Amendment. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained herein, to add to the covenants and agreements in this Bond Ordinance for the protection or benefit of the Owners, to subject to this Bond Ordinance additional revenues, properties or collateral, or to comply with any rule or regulation of the Securities and Exchange Commission relating to the Bonds. Except as provided above, this Bond Ordinance may be amended or supplemented by ordinance adopted by the Council in accordance with the laws of the State, without receipt by the City of any additional consideration but with the written consent of the Owners of seventy-five percent (75%) of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that no such ordinance (without the consent of the registered owners of all of the Bonds authorized by this Bond Ordinance and

outstanding at the time of adoption of such amendatory or supplemental ordinance) shall have the effect of permitting:

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

Notwithstanding the foregoing, prior to the issuance of the Bonds, this Bond Ordinance may be amended by resolution of the City Council to cure, correct or supplement any defect or inconsistent provision contained herein.

Section 29. Payment Due on Other Than Business Days. In any case where the date of payment of principal, premium, if any, or interest on the Bonds or the date fixed for redemption of any Bonds, or the date for performing any act or exercising any right, shall be a day other than a business day, then payment of interest or principal and premium, if any, or the performance of such act or exercise of such right need not be made on such date but may be made on the next succeeding business day with the same force and effect as if it had been made on the date scheduled for such payment, performance, or exercise.

Section 30. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, cancelled, discharged, or defeased.

Section 31. Publication of Bond Ordinance. The following notice shall be published one time in a newspaper having general circulation in the City as soon as is practicable following the adoption hereof and this ordinance shall be effective five days after such publication as provided by law.

[Form of Notice]

LEGAL NOTICE

CITY OF DEMING, NEW MEXICO
NOTICE OF ADOPTION OF ORDINANCE NO. ____

Notice is given of the adoption by the City Council of the City of Deming, New Mexico of its Ordinance No. 1316 on February 21, 2023, relating to City of Deming, New Mexico General Obligation Bonds, Series 2023. The title of the Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF CITY OF DEMING, NEW MEXICO, GENERAL OBLIGATION BONDS, SERIES 2023, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000 FOR THE PURPOSES OF (1) INSTALLING AND REPAIRING STREET LIGHTS, CONSTRUCTING, REPAIRING, AND OTHERWISE IMPROVING MUNICIPAL ALLEYS, STREETS, PUBLIC ROADS AND BRIDGES OR ANY COMBINATION OF THESE PURPOSES; (2) FUND A DEBT SERVICE RESERVE FUND, AND (3) PAY COSTS OF ISSUANCE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF, AND SECURITY FOR, PAYMENT; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE SALE OF THE BONDS PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE BONDS; RATIFYING ACTION PREVIOUSLY TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUE AND SALE OF THE BONDS.

The title sets forth a general summary of the subject matter contained in the ordinance.

Complete copies of the ordinance are on file in the Office of the City Clerk and are available for inspection and/or purchase during regular office hours. This Notice constitutes compliance with Sections 6-14-4 through 6-14-7 NMSA 1978.

[End of Form of Notice]

Section 32. Interested Parties. Nothing in this Bond Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Registrar, the Paying Agent, the Purchaser, the Bond Insurer and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Bond Ordinance or any covenant, condition or stipulation hereof.

Section 33. Governing Law. All rights and obligations of the parties with respect to the Bonds and this Bond Ordinance shall be construed, enforced, and interpreted according to the laws of the State. Venue with regard to any action relating to the Bonds or this Bond Ordinance shall be in federal or state district court located in the State.

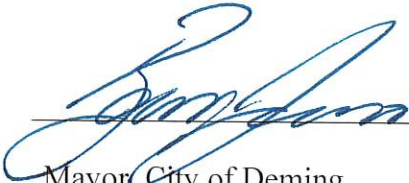
[Signature Page Follows]

PASSED, ADOPTED AND APPROVED this 21st day of February 2023.

CITY OF DEMING, NEW MEXICO

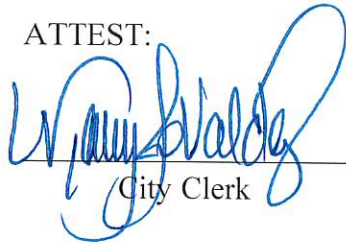


[SEAL]



Mayor, City of Deming

ATTEST:



City Clerk

The motion to adopt such ordinance was seconded by Member Mayor Pro Tem Topham and, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Councilor Milo
Councilor Valdespino
Mayor Pro Tem Topham
Councilor Rodriguez

Those Voting Nay:

N/A

Those Absent:

N/A

Those Abstaining:

N/A

Four (4) members of the Council having voted in favor of the motion, the presiding officer declared such motion carried and the ordinance adopted, whereupon the Mayor and City Clerk signed the foregoing ordinance.

After transaction of other business not related to the bond issue, the Council, upon motion duly made, seconded and carried, adjourned the meeting.

CITY OF DEMING, NEW MEXICO



A handwritten signature in blue ink, written over a horizontal line. The signature appears to be "Larry Jones".

Mayor, City of Deming

[SEAL]

ATTEST:

A handwritten signature in blue ink, written over a horizontal line. The signature appears to be "W. Valdéz".

City Clerk

STATE OF NEW MEXICO)
COUNTY OF LUNA) SS.
CITY OF DEMING)

I, Mary Jo Valdez, the duly qualified and acting City Clerk of the City of Deming (the "City"), State of New Mexico, do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the City Council of the City of Deming (the "Council"), constituting the governing board of the City, had and taken at a duly called regular, open meeting held at 309 S Gold Ave. Deming, New Mexico, on the 21st day of February, 2023, at the hour of 5:30 p.m., insofar as the same relate to the proposed bond issue, a copy of which is therein set forth as recorded in the regular book of official records of the proceedings of said City kept in my office.

2. The proceedings and the meeting were duly held, and the persons therein named were present at the meeting, as therein shown.

3. Notice of such meeting was given in accordance with the open meetings standards of the City presently in effect, i.e., Open Meeting Resolution, which is currently in effect. Such notice constitutes compliance with one of the permitted methods of giving notice of meetings of the Council as required by the open meetings standards ordinance adopted by the Council and presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2023.





City Clerk

Exhibit "A"

Notice of
Meeting/Agenda



BENNY L. JASSO, MAYOR

AARON SERA, ADMINISTRATOR

Phone (575) 546-8848 · Fax (575) 546-6442
E-MAIL: deming@cityofdeming.org Website: www.cityofdeming.org
P.O.BOX 706 · DEMING, NEW MEXICO 88031
POPULATION 14,000

CITY COUNCIL MEETING
AGENDA
February 21, 2023
5:30 P.M.

Please join the meeting from your computer, tablet or smartphone.

<https://meet.goto.com/CityofDeming> Or Using your Phone: [1 866 899 4679](tel:18668994679)

Access Code: 595-334-189 Password: 595334189

CALL TO ORDER/PLEDGE OF ALLEGIANCE/ATTENDANCE ROLL CALL

1. Consent Agenda
 - A. Minutes
 - a. Special City Council January 04, 2023
 - b. Regular City Council January 17, 2023
 - c. Parks Commission January 10, 2023
 - B. Amendment to the Reporting Supervisor for the Position of ACO/Codes Officer
 - C. Out of State Travel Request by Cassie Arias-Ward
 - D. Approval of Mayoral Appointments
 - E. Resolutions:
 - a. Authorizing and Approving an Application Submission to NM Finance Authority
 - b. Declaring Eligibility and Intent to Submit a Grant Application for TPF Funds to NMDOT
 - c. Declaring Eligibility and Intent to Submit a Grant Application for LGRF Funds to NMDOT
 - d. Authorizing the Submission of an Application for MAP Funds to NMDOT
2. Presentation by Non-Profit Organizations Funded by the City – (3 Minutes Each)
3. Request to Approve the City of Deming's Social Media Policy
4. Procurement: RFP 23-06 Inflatable Water Park
5. Public Hearing: To Consider an Ordinance Regarding the Issuance and Sale of City of Deming, NM, General Obligation Bonds, Series 2023
6. Public Hearing: To Consider an Amendment to Title 3, Chapter 8, Section 1 (A) and (B), Regarding Pawnbroker Permits
7. Public Hearing: To Consider an Amendment to Title 2, Chapter 3, Section 3 (D) of the Municipal Code Regarding Meeting Dates for Parks Commission
8. Public Hearing: To Consider an Amendment to Title 7, Adding Chapter 5 Off-Highway Vehicles to the Municipal Code
9. Public Hearing: To Consider an Amendment to Title 6, Chapter 1 Regarding Threatening and Harassment
10. Administrator's Report
11. Adjourn Meeting

The next regular City Council Meeting is scheduled for March 21, 2023 at 5:30 p.m.