

CITY OF SANTA FE, NEW MEXICO  
COUNCIL BILL NO. 2015-3

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE (THE "CITY") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$37,375,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAIVING THE COST OF ADVANCE REFUNDING THE NEW MEXICO FINANCE AUTHORITY CONVENTION CENTER LOAN DATED MARCH 28, 2006 AND TO PAY COSTS OF ISSUANCE AND PROCESSING FEES ASSOCIATED WITH THE LOAN AGREEMENT; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE REVENUES OF THE CITY'S LODGERS' TAX AND CONVENTION CENTER FEES; APPROVING THE FORM AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

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

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

WHEREAS, the Governing Body has determined and hereby determines that the Refunding may be financed with amounts borrowed under the Loan Agreement and that it is in the best interests of the Governmental Unit and its residents that the Loan Agreement be executed and delivered and that the advance refunding of the Refunded Loan take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Refunding and the Refunding will result in debt service savings and other economies for the Governmental Unit; and

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

WHEREAS, other than as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

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

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

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

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

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, Sections 3-38-13 through 3-38-24, Sections 5-14-1 through 5-14-15, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement, including this Ordinance.

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

"Authorized Officers" means the Mayor, Manager, Finance Director & Treasurer, and Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds issued by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

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

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

"Completion Date" means the date of final payment of the cost of the Refunding.

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

"Finance Authority" means the New Mexico Finance Authority.

"Finance Authority Debt Service Account" means the account in the name of the Governmental Unit within the Debt Service Fund established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

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

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

"Governmental Unit" means the City of Santa Fe, New Mexico.

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

"Indenture" means the Subordinated General Indenture of Trust dated March 1, 2005, between Finance Authority and the Trustee, and all supplemental indentures, as the same may be amended from time to time.

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

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Refunding and requires payments by or on behalf of the Governmental Unit to the Finance Authority, and any amendments or supplements thereto, including the exhibits attached to the Loan Agreement.

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

"Ordinance" means this ordinance, as supplemented or amended from time to time.

"Parity Obligations" mean the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement.

"Pledged Revenues" means four and one-half percentage increments of Lodgers' Tax and Convention Center Fees, imposed pursuant to the Lodger's Tax Act (Sections 3-38-13 through 3-38-24, NMSA), the Civic and Convention Center Funding Act (Sections 5-14-1 through 5-14-15, NMSA) and the Governmental Unit's Compiled Ordinances Section 18-11, as more fully described in the Loan Agreement.

"Program Account" means the account in the name of the Governmental Unit established under the Indenture and held by the Trustee for deposit of the net proceeds of the Loan Agreement for use by the Governmental Unit to pay the costs of the Refunding.

"Processing Fee" means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

"Refunded Loan" means the loan from the Finance Authority dated March 28, 2006, the proceeds of which were used to finance the acquisition and construction of the Convention Center.

"Refunding" means the advance refunding and defeasance of the Refunded Loan until its optional pre-payment date of March 28, 2016, when the then unpaid principal and interest (including interest until June 15, 2016, the date when the bonds issued by the Finance Authority to fund the Refunded Loan are first eligible for optional prepayment and redemption) on the Refunded Loan shall be paid from the proceeds of the Loan held in the Program Account.

"State" means the State of New Mexico.

“Term Sheet” means Exhibit “A” to the Loan Agreement.

"Trustee" means BOKF, NA dba Bank of Albuquerque or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of the Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the Refunding and the execution and delivery of the Loan Agreement, be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Loan Agreement. The advance refunding of the Refunded Loan through execution and delivery of the Loan Agreement is hereby authorized and ordered.

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

A. The Refunding is needed to meet the needs of the Governmental Unit and its residents and will result in debt service savings and other economies for the Governmental Unit.

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

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

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

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

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

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

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

Section 5.     Loan Agreement - Authorization and Detail.

A.     Authorization.     This Ordinance has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the Governmental Unit, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$37,375,000, and the execution and delivery of the Loan Agreement is hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the Refunding, (ii) to pay the costs of issuance of the Loan Agreement, and (iii) to pay the Processing Fee.

B.     Detail.     The Loan Agreement shall be in substantially the form presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of \$37,375,000, shall be payable in installments of principal due on June 15 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on June 15 and December 15 of each year, commencing on June 15, 2015, at the rates designated in Exhibit "B" to the Loan Agreement.

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

Section 7.     Special Limited Obligation.     The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance nor in the Loan Agreement, nor any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The

Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds, Completion of Refunding.

A. Program Account and Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves of the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account and the Finance Authority Debt Service Account, and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

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

The Governmental Unit will complete the Refunding with all due diligence.

B. Completion of Refunding. Upon the Completion Date, the Governmental Unit shall execute a certificate stating that the Refunding has been completed. As soon as practicable, and, in any event, not more than 60 days after the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

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

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

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid to the Finance Authority for deposit in the Finance Authority Debt Service Account and

remittance to the Trustee in an amount sufficient to pay principal, interest, and Expenses due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account totals a sum at least equal to the entire aggregate amount to become due as to principal, interest and Expenses due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal, interest and Expenses requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such account shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to this Ordinance and the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, Expenses, and any other amounts due under the Loan Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance and the Loan Agreement. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be

supplemented or amended by resolution or ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. After the date of initial delivery of the Loan Agreement to the Finance Authority, this Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

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

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Santa Fe, New Mexico  
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2015-\_\_ duly adopted and approved by the Governing Body of the City of Santa Fe, New Mexico (the "City"), on February 25, 2015. Complete

copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 200 Lincoln Avenue, Santa Fe, NM.

The title of the Ordinance is:

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF SANTA FE (THE "CITY") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$37,375,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF DEFRAYING THE COST OF ADVANCE REFUNDING THE NEW MEXICO FINANCE AUTHORITY CONVENTION CENTER LOAN DATED MARCH 28, 2006 AND TO PAY COSTS OF ISSUANCE AND PROCESSING FEES ASSOCIATED WITH THE LOAN AGREEMENT; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE REVENUES OF THE CITY'S LODGERS' TAX AND CONVENTION CENTER FEES; APPROVING THE FORM AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title.

This notice constitutes compliance with Section 6-14-6 NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2015.

CITY OF SANTA FE, NEW MEXICO

By \_\_\_\_\_  
Javier M. Gonzales, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Yolanda Y. Vigil, Clerk

APPROVED AS TO FORM:

By Kelley A. Brennan  
Kelley A. Brennan, City Attorney

Councilor \_\_\_\_\_ then moved adoption of the foregoing Ordinance, duly seconded by \_\_\_\_\_.

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

Those Voting Aye: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
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Those Voting Nay: \_\_\_\_\_  
\_\_\_\_\_

Those Absent: \_\_\_\_\_  
\_\_\_\_\_

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

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

CITY OF SANTA FE, NEW MEXICO

By \_\_\_\_\_  
Javier M. Gonzales, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Yolanda Y. Vigil, Clerk

STATE OF NEW MEXICO )  
COUNTY OF SANTA FE ) ss.  
CITY OF SANTA FE )

I, Yolanda Y. Vigil, the duly acting and qualified Clerk of the City of Santa Fe, New Mexico (the "City"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City, had and taken at a duly called regular meeting held at the Santa Fe Municipal Offices, 200 Lincoln Avenue, Santa Fe, New Mexico, 87501, on February 25, 2015 at the hour of 7:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

3. Notice of the February 25, 2015, meeting of the Governing Body was duly given as required by the Open Meetings Act, Sections 10-15-1 through 4, NMSA 1978 and Resolution No. 2015-1 which is the current Resolution of the City which establishes the reasonable notice policy of the City as required by the Open Meetings Act.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of April, 2015.

CITY OF SANTA FE, NEW MEXICO

(SEAL)

By \_\_\_\_\_  
Yolanda Y. Vigil, Clerk

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EXHIBIT "A"

Notice of Meeting