



**SIERRA COUNTY, NEW MEXICO
RESOLUTION NO. 109-079**

AUTHORIZING THE EXECUTION AND DELIVERY OF AN INTERCEPT AGREEMENT BY AND AMONG SIERRA COUNTY, NEW MEXICO (THE "GOVERNMENTAL UNIT"), DOÑA ANA COUNTY, NEW MEXICO AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY") IN CONNECTION WITH THE NEW MEXICO SPACEPORT AUTHORITY TAXABLE GROSS RECEIPT TAX REFUNDING REVENUE BONDS, SERIES 2021; ALLOWING THE FINANCE AUTHORITY TO INTERCEPT UP TO SEVENTY-FIVE PERCENT OF THE SIERRA COUNTY REGIONAL SPACEPORT GROSS RECEIPTS TAXES, IMPOSED IN THE AMOUNT OF ONE QUARTER OF ONE PERCENT OF THE GROSS RECEIPTS OF PERSONS ENGAGING IN BUSINESS THE SPACEPORT AMERICA REGIONAL SPACEPORT DISTRICT (THE "DISTRICT") AREA PURSUANT TO SECTION 7-20E-25, NMSA 1978, AND DISTRIBUTED TO THE DISTRICT THROUGH THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; ACKNOWLEDGING AND CONFIRMING THE DISTRICT'S RESOLUTION REQUESTING THAT THE GOVERNMENTAL UNIT ENTER INTO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE SPACEPORT AUTHORITY TAXABLE GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2021; AUTHORIZING TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; RATIFYING PRIOR ACTIONS CONSISTENT WITH THIS RESOLUTION AND REPEALING PRIOR INCONSISTENT ACTIONS AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE INTERCEPT AGREEMENT.

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

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

WHEREAS, the Spaceport America Regional Spaceport District (the "District") of the State of New Mexico (the "State") was created under the Regional Spaceport District Act, Section 5-16-1 et. seq., NMSA 1978 (the "Spaceport District Act"); and

WHEREAS, pursuant to Sierra County Ordinance No. 08-002 and Doña Ana County Ordinance No. 227 A-07, each of these counties has adopted a county regional spaceport gross receipts tax in the amount of one-fourth of one percent (.25%) as authorized by Section 7-20E-25, NMSA 1978; and

WHEREAS, pursuant to Section 5-16-13, NMSA 1978, seventy-five percent (75%) of the regional spaceport gross receipts tax revenues received by the governmental units that create the District (the "Pledged Revenues") must be used by the District for the financing, planning, designing, engineering and construction of a regional spaceport; and

WHEREAS, the District approved, by its Resolution No. 2009-1, a memorandum of agreement dated April 15, 2009, to be amended and restated by an amendment and restatement of memorandum of agreement dated the Closing Date (the "Amendment and Restatement"), between the District and the Spaceport Authority concerning the financing and refinancing of a regional spaceport; and

WHEREAS, pursuant to the Tax Administration Act, Section 7-1-6.15(H), NMSA, 1978, as amended, the secretary of the state taxation and revenue department is authorized to redirect a distribution to the Finance Authority pursuant to resolutions passed by Doña Ana and Sierra counties and a written agreement between each county and the Finance Authority (the "Intercept Agreement"); and

WHEREAS, the District adopted Resolution No. 2021-_____ on March 24, 2021 requesting the Spaceport Authority to issue the Spaceport Authority Taxable Gross Receipts Tax Refunding Revenue Bonds, Series 2021 in one or more series in an aggregate principal amount not to exceed \$42,436,213.16 (the "Bonds" or "2021 Bonds") to provide funds for the refunding of the Spaceport Authority's outstanding Refunded Bonds (the "Project"), pledging the Pledged Revenues to payment of the 2021 Bonds, approving forms of the Amendment and Restatement and the Intercept Agreement, and authorizing the sale of the 2021 Bonds to the Finance Authority; and

WHEREAS, the Spaceport Authority adopted Resolution No. _____ on May 6, 2021 authorizing the issuance of the 2021 Bonds and the sale of the 2021 Bonds to the Finance Authority (the "Resolution"); and

WHEREAS, the 2021 Bonds shall be a special, limited obligation of the Spaceport Authority, payable solely from the Pledged Revenues, and shall not constitute a general obligation of the Governmental Unit, the District, the Spaceport Authority or a debt or pledge of the faith and credit of the Governmental Unit, the District, the Spaceport Authority or the State; and

WHEREAS, the Governmental Unit desires to provide that a portion of the Pledged Revenues shall be used to pay debt service and other obligations with respect to the 2021 Bonds; and

WHEREAS, other than the Pledged Revenues, no tax revenues collected by the Governmental Unit shall be pledged to the 2021 Bonds; and

WHEREAS, the Resolution has been presented to the Governing Body and there presently are on file with the County Clerk the Resolution and the form of Intercept Agreement, which is hereby approved, ratified and considered to be a part hereof; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the pledging of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of the proceeds of the 2021 Bonds, (ii) the use of the proceeds of the 2021 Bonds to finance the 2021 Bonds, and (iii) the authorization, execution and delivery of the Intercept Agreement which is required to carry out the obligations of the date of this Resolution have been obtained or are reasonably expected to be obtained;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SIERRA COUNTY, NEW MEXICO:

Section 1. **Definitions.** As used in this Resolution the following capitalized terms shall, unless otherwise expressly stated herein specified, unless the context clearly requires otherwise shall apply equally and be equally applicable to both the singular and the plural forms of the terms defined.

"Act" means the general laws of the State, Section 7-20E-25, NMSA 1978, as amended, and all orders of the Governing Body relating to the Intercept Agreement, including this Resolution.

"Advisory Officers" means the Chair or Vice-Chair of the Board of County Commissioners, the County Manager, the County Treasurer and the County Clerk or deputy County Clerk.

"Authorized Agency" means the taxation and revenue department authorized to manage the Pledged Revenues on behalf of the Governmental Unit.

"Finance Authority" means the New Mexico Finance Authority.

"Governing Body" means the Board of County Commissioners of the Governmental Unit, which is the governing body of the Governmental Unit.

"Governmental Unit" means Sierra County, New Mexico.

"Intercept Agreement," "hereunder," "hereof," "hereinabove" and "hereafter" refer to this Resolution and not solely to the particular section or paragraph of this Resolution in which they are used.

"Intercept Agreement" means the Intercept Agreement, between and among the Governmental Unit, Sierra County and the Finance Authority, and approved by the District,

WHEREAS, the Governmental Unit desires to provide that a portion of the Pledged Revenues in an amount sufficient to pay debt service and other obligations with respect to the 2021 Bonds be redirected to the Finance Authority or its assigns pursuant to the Intercept Agreement for the payment of the 2021 Bonds; and

WHEREAS, other than the Pledged Revenues, no tax revenues collected by the Governmental Unit shall be pledged to the 2021 Bonds; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the County Clerk this Resolution and the form of Intercept 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 amounts due on the 2021 Bonds, (ii) the use of the proceeds of the 2021 Bonds to finance the Project, and (iii) the authorization, execution and delivery of the Intercept Agreement which is required to have been obtained by the date of this Resolution have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SIERRA COUNTY, NEW MEXICO:

Section 1. Definitions. As used in this Resolution the following capitalized 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, Section 7-20E-25, NMSA 1978, as amended, and enactments of the Governing Body relating to the Intercept Agreement, including this Resolution.

“Authorized Officers” means the Chair or Vice-Chair of the Board of County Commissioners, the County Manager, the County Treasurer and the County Clerk or deputy County Clerk.

“Distributing State Agency” means the taxation and revenue department authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

“Finance Authority” means the New Mexico Finance Authority.

“Governing Body” means the Board of County Commissioners of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means Sierra County, New Mexico.

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

“Intercept Agreement” means the Intercept Agreement, between and among the Governmental Unit, Doña Ana County and the Finance Authority, and approved by the District,

providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues, and any amendments or supplements to the Intercept Agreement.

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

“Project” means the refunding of the Refunded Bonds.

“Refunded Bonds” means the outstanding Spaceport Authority \$55,810,000 Gross Receipts Tax Revenue Bonds, Series 2009 (Loan No. PPRF-2288) and Spaceport Authority \$20,560,000 Gross Receipts Tax Revenue Bonds, Series 2011 (Loan No. PPRF-2527).

“Resolution” mean this Resolution No. 2021-____ adopted by the Governing Body on May 18, 2021 approving the Intercept Agreement, as amended from time to time.

“State” means the State of New Mexico.

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

- A. At least seventy-five (75%) percent of the county regional spaceport gross receipts tax revenues received by the Governmental Unit must be used by the District for the financing, design, engineering and construction of a regional spaceport.
- B. The District has pledged the Pledged Revenues to the Project.
- C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due on the 2021 Bonds.
- D. The Project and the execution and delivery of the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of and the public served by the Governmental Unit

Section 4. Approval of Intercept Agreement. The form of the Intercept Agreement attached to this Resolution as Attachment 1 as presented at the meeting of the Governing Body at which this Resolution was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Intercept Agreement, with such changes, insertions and omissions consistent with this Resolution as may be approved by such individual Authorized Officers, and the County Clerk or any deputy County Clerk is hereby authorized to affix the seal of the Governmental Unit on the Intercept Agreement and attest the same. The execution of the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 5. Resolution Irrepealable. After the Intercept Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the 2021 Bonds shall be fully paid, redeemed and discharged.

Section 6. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. 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 8. Effective Date. Upon due adoption of this Resolution it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signature of the Chair or Vice-Chair of the Board of County Commissioners and the County Clerk or any Deputy County Clerk of the Governmental Unit.

[signature, voting record and certification pages follow]

PASSED, APPROVED AND ADOPTED THIS MAY 18, 2021.

SIERRA COUNTY, NEW MEXICO

By: James E. Paxon
James Paxon, Chair
Board of County Commissioners

[SEAL]



ATTEST:

By: Amy Whitehead
Shelly Trujillo, County Clerk
Chief Deputy