



THE BOARD OF TRUSTEES (BOT) OF THE TOWN OF MESILLA

REGULAR MEETING
AT THE MESILLA TOWN HALL, 2231
AVENIDA DE MESILLA

MONDAY, December 8, 2025 - 6PM

AGENDA

- 1. PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL & DETERMINATION OF A QUORUM**
- 3. CHANGES TO THE AGENDA & APPROVAL**
- 4. APPROVAL OF CONSENT AGENDA:** (The Board will be asked to approve by one motion the following items of recurring or routine business)
 - a) **BOT MINUTES** – November 24, 2025 - BOT Regular Meeting
- 5. PUBLIC INPUT ON CASES – The public is invited to address the Board as allowed by the chair.**
- 6. ACTION AND CONSIDERATION**
NEW BUSINESS
 - a) **APPROVAL** – SIGN PERMIT CASE #062076 –2470 Calle de Guadalupe, C. Submitted by Kalyn Hazen. Applicant is looking to put up two signs for her potential new business, Just Peachy Double Wide Designs. ZONE: Historical Commercial (HC).
 - b) **APPROVAL** – CASE #062067 – 2185 Calle de Guadalupe, submitted by Richard Moreno. Requesting approval to construct an accessory building on the property. ZONE: Historical Residential (HR).
 - c) **APPROVAL** – Commemorative Park Engineering Proposal (Preliminary Planning)
 - d) **DISCUSSION** – Wireless Telecommunication Facilities Ordinance Update – Attorney Led discussion
- 7. PUBLIC INPUT – The public is invited to address the Board as allowed by the chair.**

8. BOARD OF TRUSTEE COMMITTEE REPORTS & LIASION UPDATES

9. BOARD OF TRUSTEE/STAFF COMMENTS

a) *Ongoing Projects Listing*

b) *Calendar of Events*

10. ADJOURNMENT

NOTICE

If you need accommodation for a disability to enable you to fully participate in the hearing or meeting, please contact us at 524-3262 at least one week prior to the meeting. The Mayor and Trustees request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Board Room to respond to or to conduct a phone conversation. A copy of the agenda can be found online at www.mesillanm.gov.

Posted **12.04.2025** online and at the following locations: Town Hall and Visitor's Center Avenida de Mesilla, Public Safety Building 2670 Calle de Parian, Mesilla Community Center 2251 Calle de Santiago, Short's Food Mart 2290 Avenida de Mesilla, and the U.S. Post Office 2253 Calle de Parian. Stream live at www.youtube.com/@townofmesilla7501.

****BOT MEETINGS ARE AVAILABLE LIVE ON TOWN OF MESILLA'S YOUTUBE PAGE****



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2 **THE BOARD OF TRUSTEES (BOT) OF THE TOWN OF MESILLA**

3 **REGULAR MEETING**

4 **AT THE MESILLA TOWN HALL,**
5 **2231 AVENIDA DE MESILLA**

6 **MONDAY, November 24, 2025 - 6:12 P.M.**

7 **MINUTES**

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9 **TRUSTEES:** Russell Hernandez, Mayor
10 Adrianna Merrick, Mayor Pro Tem (Absent)
11 Biviana Cadena, Trustee
12 Stephanie Johnson-Burick, Trustee
13 Gerard Nevarez, Trustee
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15 **STAFF:** Lourdes Hernandez, Sergeant
16 Lorenzo Astorga, Public Works Director
17 Edward Salazar, Econ & Com Development Director
18 Greg Whited, Fire Chief
19 Cole Morris, Fire Captain
20 Rafael Ruiz, EMT
21 Gloria S Maya, Town Clerk/Recorder
22

23 **PUBLIC:** Crystal Whited Scott Tuft
24 Trinia Witter Catharine Walkinshaw
25 Eric Walkinshaw Richard Moreno
26 Dasa
27

28 **1. PLEDGE OF ALLEGIANCE**

29 Mayor Hernandez led the Pledge of Allegiance.

30 **2. ROLL CALL & DETERMINATION OF A QUORUM**

31 **Roll Call.**

32 **Present:** Mayor Hernandez, Trustee Cadena, Trustee Nevarez, Trustee Johnson-Burick.
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34 Mayor Hernandez made a statement before the meeting.
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36 **3. CHANGES TO THE AGENDA & APPROVAL**

37 **Motion:** To approve agenda as amended, Moved by Trustee Nevarez, Seconded by Trustee Cadena.
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39 Mayor Hernandez requested removing item 6b and 6f from the agenda.
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41 Trustee Johnson-Burick commented
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Roll Call Vote: Motion passed (summary: Yes-3)

Trustee Cadena Yes
Trustee Nevarez Yes
Trustee Johnson-Burick Yes

4. APPROVAL OF CONSENT AGENDA: (The Board will be asked to approve by one motion the following items of recurring or routine business)

- a) **BOT MINUTES** – November 11, 2025 - BOT Regular Meeting *Approved by consent agenda*
- b) **APPROVAL – Purchase Requisition** – Community Center Security Upgrades – Apic Solutions - \$151,778.86 – from Capital Outlay Funding *Approved by consent agenda*
- c) **APPROVAL – Purchase Requisition** – Copper & Lead Line Testing – CobbFendley - \$23,952.50 – From Capital Outlay Funding *Approved by consent agenda*

Motion: To approve consent agenda, Moved by Trustee Johnson-Burick, Seconded by Trustee Nevarez.

Motion passed unanimously

5. PUBLIC INPUT ON CASES – The public is invited to address the Board as allowed by the chair.

Ms. Witter commented

Dasa commented

**6. ACTION AND CONSIDERATION
OLD BUSINESS**

- a) **DISCUSSION – 2025 Comprehensive Plan Land Use Map – Updated**

Mayor Hernandez reviewed the 2025 Comprehensive Plan Land Use Map – Updated.

Trustee Cadena commented

Trustee Johnson-Burick commented

Trustee Nevarez commented

- b) **DISCUSSION – 2025 Comprehensive Plan Priorities Action Plan** (handed out at meeting) *Removed from agenda*

- c) **APPROVAL – Personnel Designation for Public Works Grounds Team**

Mayor Hernandez reviewed the new personnel designation for Public Works Grounds Team.

Motion: To approve Personnel Designation for Public Works Grounds Team, Moved by Trustee Johnson-Burick, Seconded by Trustee Cadena.

Roll Call Vote: Motion passed (summary: Yes-3)

Trustee Cadena Yes
Trustee Nevarez Yes
Trustee Johnson-Burick Yes

NEW BUSINESS

- d) **DISCUSSION – Ongoing Projects Listing and Updates** (handed out at meeting)

Mayor Hernandez reviewed the Ongoing Projects Listing and Updates.

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4 e) **DISCUSSION** – 8.15 Code Update – Nuisance [Abatement]

5 Mr. Salazar reviewed the 8.15 Code Update – Nuisance (Abatement)

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7 Trustee Johnson-Burick commented

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9 Mayor Hernandez commented

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11 Trustee Nevarez commented

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13 Trustee Cadena commented

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15 f) **APPROVAL** – PZHAC CASE #062067 – 2185 Calle de Guadalupe, submitted by Richard
16 Moreno. Requesting approval to construct an accessory building on the property. ZONE:
17 Historical Residential (HR). **Removed from agenda**

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19 g) **APPROVAL** – PZHAC CASE #062071 - 2319 Calle de Santiago, submitted by The Fancy
20 Pony Beauty & Boutique. Requesting approval install a projecting sign. ZONE: Historical
21 Commercial (HC).

22 Mr. Salazar reviewed PZHAC Case #062071.

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24 **Motion: To approve PZHAC Case #062071 – 2319 Calle de Santiago, submitted by the Fancy Pony**
25 **Beauty & Boutique. Requesting approval to install a projecting sign. ZONE: Historical**
26 **Commercial (HC), Moved by Trustee Johnson-Burick, Seconded by Trustee Cadena.**

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28 Trustee Johnson-Burick commented

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30 **Roll Call Vote: Motion passed (summary: Yes-3)**

31 Trustee Cadena Yes

32 Trustee Nevarez Yes

33 Trustee Johnson-Burick Yes

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35 h) **APPROVAL** – PZHAC CASE #062072 - 2319 Calle de Santiago, submitted by The Fancy
36 Pony Beauty & Boutique. Requesting approval install a wall sign. ZONE: Historical
37 Commercial (HC).

38 Mr. Salazar reviewed PZHAC Case #062072.

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40 **Motion: To approve PZHAC Case #062072 – 2319 Calle de Santiago, submitted by the Fancy Pony**
41 **Beauty & Boutique. Requesting approval to install a wall sign. ZONE: Historical Commercial**
42 **(HC), Moved by Trustee Nevarez, Seconded by Trustee Johnson-Burick.**

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44 **Roll Call Vote: Motion passed (summary: Yes-3)**

45 Trustee Cadena Yes

46 Trustee Nevarez Yes

47 Trustee Johnson-Burick Yes

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49 i) **APPROVAL** – Resolution 2025-68 – Budget Adjustments

50 Ms. Maya reviewed Resolution 2025-68.

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52 **Motion: To approve Resolution 2025-68 – Budget Adjustments, Moved by Trustee Johnson-Burick,**
53 **Seconded by Trustee Cadena.**

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55 **Roll Call Vote: Motion passed (summary: Yes-3)**

56 Trustee Cadena Yes

57 Trustee Nevarez Yes

58 Trustee Johnson-Burick Yes

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j) APPROVAL – Resolution 2025-69 – CLG Code Amendments

Mayor Hernandez reviewed Resolution 2025-69.

Motion: To approve Resolution 2025-69 – CLG Code Amendments, Moved by Trustee Johnson-Burick, Seconded by Trustee Nevarez.

Roll Call Vote: Motion passed (summary: Yes-3)

Trustee Cadena Yes
Trustee Nevarez Yes
Trustee Johnson-Burick Yes

k) APPROVAL – Resolution 2025-70 – Amendment to Zoning Map – Rezone of Property at 2886 Snow Rd, Parcel number 4005139210015

Mayor Hernandez reviewed Resolution 2025-70.

Motion: To approve Resolution 2025- 79 – Amendment to Zoning Map – Rezone of Property at 2886 Snow Rd, Parcel number 4005139210015, Moved by Trustee Johnson-Burick, Seconded by Trustee Cadena.

Roll Call Vote: Motion passed (summary: Yes-2; No-1)

Trustee Cadena Yes
Trustee Nevarez Yes
Trustee Johnson-Burick No

l) APPROVAL – Verizon Connect Vehicle Tracking and Asset Management

Mayor Hernandez reviewed the Verizon Connect Vehicle Tracking and Asset Management.

Motion: To approve – Verizon Connect Vehicle Tracking and Asset Management, Moved by Trustee Johnson-Burick, Seconded by Trustee Cadena.

Trustee Johnson-Burick commented

Trustee Nevarez commented

Roll Call Vote: Motion passed (summary: Yes-3)

Trustee Cadena Yes
Trustee Nevarez Yes
Trustee Johnson-Burick Yes

7. PUBLIC INPUT – The public is invited to address the Board as allowed by the chair.

Ms. Ratje commented

Ms. Dasa commented

Ms. Garcia commented

8. BOARD OF TRUSTEE COMMITTEE REPORTS & LIASION UPDATES

Trustee Nevarez: SCRTD meeting

Trustee Johnson-Burick: MPO meeting

Trustee Cadena: Taylor Mesilla Historic Sites meeting

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Mayor Hernandez: MPO meeting, SCCOG Legislative Forum, MPO Executive meeting, New Mexico Transportation District Quarterly meeting

9. BOARD OF TRUSTEE/STAFF COMMENTS

a) Calendar of Events

Sergeant Hernandez gave a department (Marshal) update.

Trustee Nevarez commented

Mayor Hernandez commented

Fire Chief Whited gave a department (Fire) update.

Mayor Hernandez commented

Trustee Johnson-Burick commented

Trustee Cadena commented

Mr. Astorga gave a department (Public Works) update.

Mr. Salazar gave a department (Com/Economic Development) update.

Trustee Nevarez commented

Trustee Johnson-Burick commented

Trustee Cadena commented

Mayor Hernandez commented

10. ADJOURNMENT

The Town of Mesilla Trustees unanimously agreed to adjourn the meeting. (Summary: Yes-3).

MEETING ADJOURNED AT 8:40 P.M.

APPROVED THIS 8th DAY OF DECEMBER, 2025.

Russell Hernandez
Mayor

ATTEST:

Gloria S. Maya
Town Clerk/Treasurer

****BOT MEETINGS ARE AVAILABLE LIVE ON TOWN OF MESILLA'S YOUTUBE PAGE****

**BOARD ACTION FORM
AGENDA DATE**

PZHAC: 12/1/2025

BOT: 12/8/2025

**DAC ACCOUNT # R0401208
BLDG CODE –
EVALUATION COST- \$
FEE - \$10.00**

ITEM: SIGN PERMIT CASE #062076 –2470 Calle de Guadalupe, C. Submitted by Kalyn Hazen. Applicant is looking to put up two signs for her potential new business, Just Peachy Double Wide Designs. ZONE: Historical Commercial (HC).

BACKGROUND AND ANALYSIS:

Ms. Hazen is looking to comply with the Town code and erect two signs, one on each side of the building and at each entrance of her business. The prior business had previously put up signs in the same locations, this would just be replacing those. Please see attached application and photos for details and location of the potential signs. Each sign will be at maximum 2.5 sq. ft.

IMPACT:

- The PZHAC has jurisdiction to recommend approval of the applicant’s request for approval of this request to the BOT.
- The applicant has the authority to make an application request to the PZHAC and BOT.
- The applicant has the authority to appeal the decision from PZHAC to BOT.

ALTERNATIVES:

The Planning, Zoning and Historical Appropriateness Commission (PZHAC) may:

1. Recommend approval of this case with findings stated above.
2. Recommend approval of this case with findings stated above and conditions.
3. Deny the application.

DEPARTMENT COMMENTS:

- Department recommends approval

SUPPORTING INFORMATION:

- Application
- Photos of signs along with location

DETERMINATION NOTES

–Approved, 4-0, no conditions



Town of Mesilla
P.O. BOX 10
MESILLA, NM 88046
PHONE: (575) 524-3262 FAX (575) 541-6327

SIGN PERMIT

Application Date: _____

Name of Business

Name of Applicant

Address of Business

Address of Applicant

City State Zip

City State Zip

Telephone Number

Alternate Telephone Number

Location and description of Sign:
(include dimensions, lettering, shape, material, texture, colors, and/or finish to be used. Attach a drawing of the location of the sign, including any other advertising structures on the building or lot.) - Looking to install two signs one in front and one in back of property. Each sign will be no more than 2.5 sq. feet. Attached is image of signs plus locations. Flat signs will go on the wall and hanging sign will be on south side. Signs will be acrylic

For Office Use Only

Administrative Approval: _____

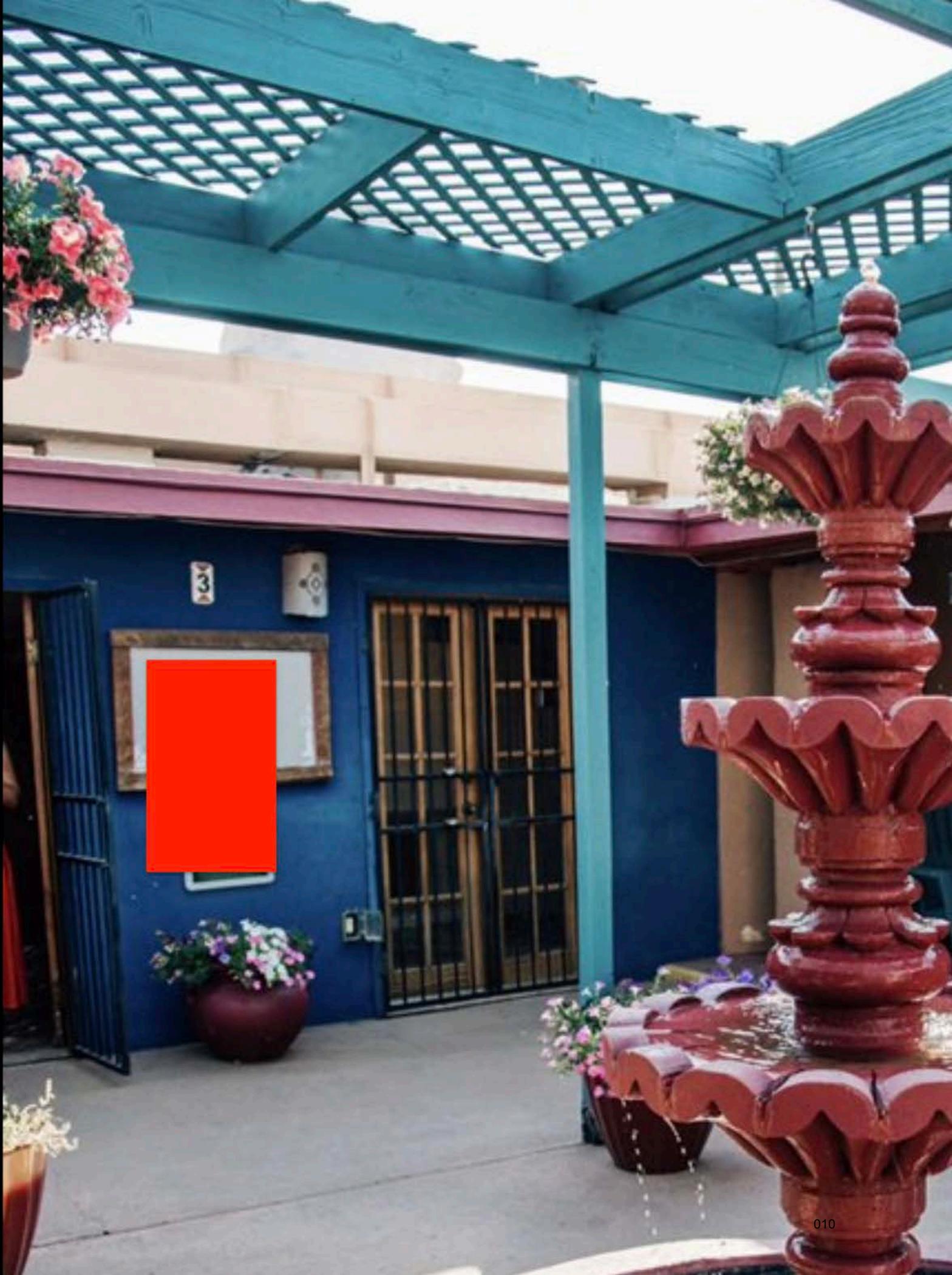
Permit Fee: _____ 10.00

PZHAC Approval: _____

Date of Payment: _____

BOT Approval: _____

CASE NUMBER: 062076



*Just
Peachy*



DOUBLE/WIDE
DESIGNS

TURQUOISE • WESTERN
FASHION • HOME DECOR
& MORE



Home Instead
Senior Care
www.homeinstead.com

Text
Text

Hanging Sign



**BOARD ACTION FORM
AGENDA DATE**

PZHAC: 11/17/2025

BOT: 11/24/2025

**DAC ACCOUNT – R0400287
BLDG CODE – AC
EVALUATION COST- \$80,000
FEE - \$1247**

ITEM: PZHAC CASE #062067 – 2185 Calle de Guadalupe, submitted by Richard Moreno. Requesting approval to construct an accessory building on the property. ZONE: Historical Residential (HR).

BACKGROUND AND ANALYSIS:

Mr. Moreno is requesting approval to construct a rammed earth structure approximately 450 sq feet. The structure will be constructed by Earthling Ingenuity. Mr. Moreno needs a place to care for his brother. He is currently caring for him at his residence but recently has required his brother to be more and more wheelchair bound and is struggling due to his home is not ADA constructed. Instead of remodeling his home, he is looking to build this small “Casita” on his property. The plans and design have been reviewed by our review party to include our Historic Specialist, Liana Aguirre. She included some information regarding the request. Mr. Moreno’s site plan show a 3-foot setback on the north and east side boundary lines. According to Mesilla Town Code (MTC) Development Standards 18.35.060(B) –

*Canopies and accessory structures in a rear yard shall not be more than 50 percent of the required area and can be set back **three feet from the side or rear yards if they are made of fire resistive materials.** Any temporary structures can be set back three feet from the side or rear yards if they are made of fire resistive materials.*

IMPACT:

- The PZHAC has jurisdiction to recommend approval of the applicant’s request for approval of this request to the BOT.
- The applicant has the authority to make an application request to the PZHAC and BOT.
- The applicant has the authority to appeal the decision from PZHAC to BOT.

ALTERNATIVES:

The Planning, Zoning and Historical Appropriateness Commission (PZHAC) may:

1. Recommend approval of this case with findings stated above.
2. Recommend approval of this case with findings stated above and conditions.
3. Deny the application.

DEPARTMENT COMMENTS:

- A workshop has been scheduled according to Mesilla Town Code (MTC)18.33.080
- Mesilla Town Code (MTC) 18.10-Definitions defines a guest house to be accessory to the primary residence and not rented/business. It shall also not exceed 600 sq ft.

“Guest house” is an attached or detached unit used as an accessory building to the primary single-family home and not rented or otherwise conducted as a business. A guest house shall not exceed 600 square feet outside dimensions.

- Structure is constructed of rammed earth. Should it be considered to be fire-resistant material to meet the 3-foot requirement. Small windows facing the property line will need to be constructed with fire resistant glass as allowed by fire and/or building code.

SUPPORTING INFORMATION:

- | | | | |
|--------------------------|------------------|------------------|------------------|
| • Application | -Street view pic | -Floor Plan | -Foundation Plan |
| • Rammed Earth Info | -Elevations | -Electrical Plan | -Wall Section |
| • Satellite Site Picture | -Site Plan | -Plumbing Plan | |

**TOWN OF MESILLA
APPLICATION FOR ZONING PERMIT**

Permit Fee \$ 1115.00
 Review Fee \$ 132.00
 Total Fee \$ 1247.00

2231 Avenida de Mesilla, P.O. Box 10, Mesilla, NM 88046 (575) 524-3262 ext. 104

CASE NO. 062067 **ZONE:** HR **CODE:** ADDT10 **APPLICATION DATE:** 11/4/2025

Richard Moreno
 [Redacted] Mesilla NM 88046
 Property Owner's Mailing Address City State Zip Code
 [Redacted] com [Redacted]
 Property Owner's E-mail Address Property Owner's Telephone Number

Earthling Ingenuity
 Contractor's Name & Address (If none, indicate Self)
 [Redacted] UM Lic # [Redacted]
 Contractor's Telephone Number Contractor's Tax ID Number Contractor's License Number

Address of Proposed Work: 2185 Calle de Guadalupe Mesilla, NM 88046

Description of Proposed Work: Construction of a 23x28 Rammed Earth Structure complete with plumbing and living areas. Details explained in Project Proposal

THIS APPLICATION SHALL INCLUDE ALL OF THE FOLLOWING Plan sheets are to be no larger than 11 x 17 inches or shall be submitted electronically.

1. Site plan with legal description to show existing structures, adjoining streets, driveway(s), improvements & setbacks. Verification shall show that the lot was **LEGALLY** subdivided through the Town of Mesilla or that the lot has been in existence prior to February 1972.
2. N/A Window replacement, need data sheet of new windows.
3. Foundation plan, new construction plans in full size drawings.
4. Floor plan showing rooms, their uses, and dimensions.
5. Cross section of walls.
6. Roof and floor framing plan.
7. N/A Proof of property ownership/tenant lease. (Warranty Deed/Property Tax Receipt)
8. Drainage plan (commercial).
9. Details of architectural style and color scheme (checklist included for Historical zones) – diagrams and elevations.
10. Valid government issues identification (Driver License/ID/Passport)

\$ 80,000 Estimated Cost [Signature] Signature of Applicant 10.28.2025 Date

Application Fee is due at time of submittal. Apart from administrative approvals, all permit requests must undergo a review process from staff, PZHAC and/or BOT before issuance of a zoning permit. All zoning permits expire after one year from date issued. *ALL permits must be displayed in clear view until final inspection*****

FOR OFFICIAL USE ONLY

		DAY/MONTH/YEAR
PUBLIC WORKS	<u>[Signature]</u> <small>Lorenzetti (Nov 10, 2025 17:10:40 MST)</small>	10/11/25
FIRE DEPARTMENT	<u>[Signature]</u>	10/11/25
NEW MEXICO CID	<u>[Signature]</u> <small>Thomas Maese (Nov 12, 2025 07:36:47 MST)</small>	12/11/25
HISTORIC PRESERVATION SPECIALIST	SEE DETAILS ON RAMMED EARTH FOR RECOMMENDATION	
COMMUNITY & ECONOMIC DEV	<u>[Signature]</u>	10/11/25

PERMISSION ISSUED / DENIED BY: _____ ISSUE DATE: _____

Rammed Earth Production

Building with rammed earth is not new. It is mentioned that the Romans introduced it to France. Prior to that its history extends from 9,000-7,000 B.C.E. Various rammed earth buildings have been constructed in England, Africa, Australia, New Zealand, Mexico (and New Mexico) and California. Although building with rammed earth has been practiced for many centuries in many countries, the process is still widely unknown and limited in usage.

Rammed-earth construction has also been used by "do-it-yourself"-type owners who prefer to use their own soil and labor to construct buildings. The rammed-earth technique can be used to build substantial structures, which include houses, barns, commercial buildings, walls, and stables. Rammed-earth walls are similar to pressed-earth blocks (similar to adobe bricks), but because of size, type equipment, and forms used to construct the walls, the production method differs.

Rammed-earth walls are built by thoroughly tamping layers of moist soil between wooden, steel, or aluminum forms to form a layer several inches deep (Fig. 77). When a section of wall has been tamped, the forms are moved upwards or sideways and the process is repeated until the wall is completed. The ramming is done with hand-operated or pneumatic tampers that reduce the volume of the soil material 25–30% to a dense and firm compaction (Wolfskill and others, 1970; Fig. 78). The forms require accurate setting and must be held in place so that the rammed-earth wall will be straight and true.

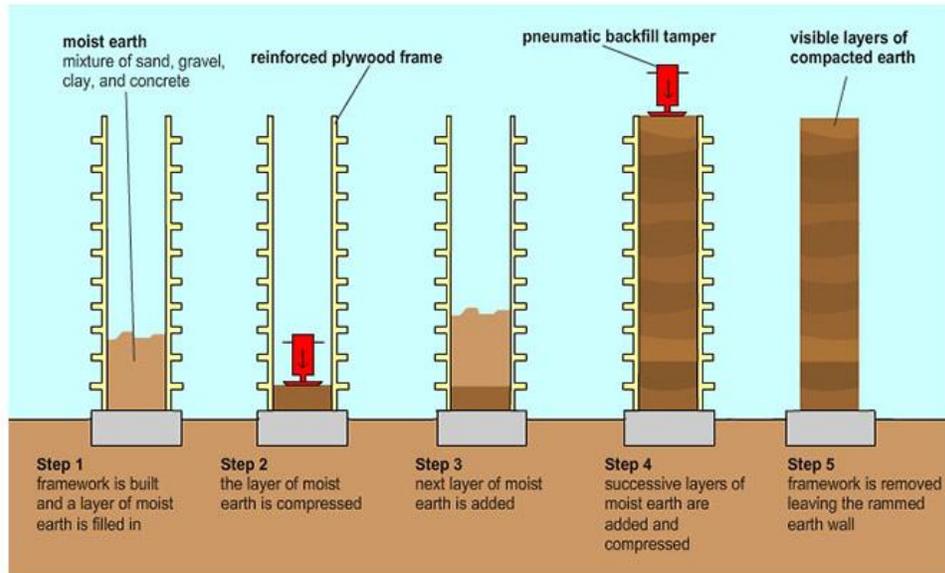
Benefits (similar to that of adobe):

In addition to having a low environmental impact (depending on material sourcing and cement and composition) , thermal mass and natural aesthetic, the benefit of rammed buildings are:

- ↑ Distinct appearance
- ↑ Natural and readily available
- ↑ Low embodied energy (a level similar to brick veneer construction)
- ↑ Unstabilised earth is reuseable post-demolition
- ↑ High moisture mass, hygroscopic - helps regulate humidity
- ↑ Use of local soils supports sustainability practices
- ↑ High thermal mass (though work is still underway to quantify its extent)
- ↑ Airtight construction achievable
- ↑ Traditional form of construction
- ↑ Modern methods are widely tried and tested overseas eg Australia

Rammed earth

- Rammed earth walls (aka pise) are constructed by the compacting (ramming) of moistened subsoil into place between temporary formwork panels. When dried, the result is a dense, hard monolithic wall.



- A vernacular green building material as well as in more recent 'Eco houses', rammed earth is an ancient form of construction, usually associated with arid areas. There remain plentiful examples of the form around the world – evidence that rammed earth is a successful and durable way of building. A few historical rammed earth buildings

In summary, rammed earth is very similar adobe in composition and shares various physical and aesthetic attributes. It will conform easily to the surrounding structures and match the design style in the Town.

Based on the structural design given for this project, within the Historic Zone, I recommend approval.

Liana Aguirre

Historic Preservation Specialist

Town of Mesilla

comdev@mesillanm.gov

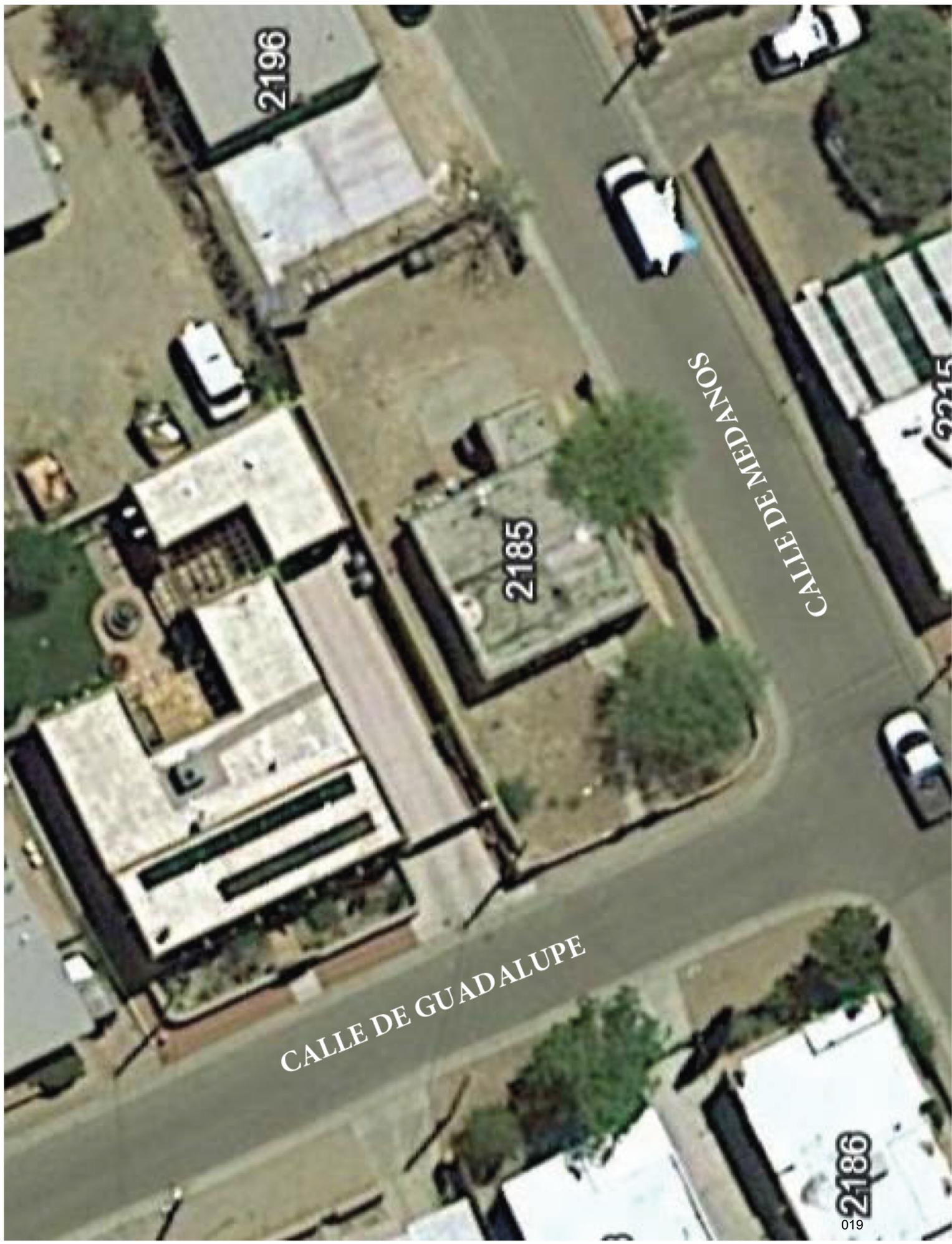
Please feel free to email with any questions!

Resources:

(geoinfo.nmt.edu)-Bulletin127 (with some edits by LA).

Wolfskill, L. A., Dunlap, W. A., and Gallaway, B. M., 1970, Hand-book for building homes of earth: Department of Housing and Urban Development, Office of International Affairs, Washington, D. C., 160 pp.

(images from <https://www.greenspec.co.uk/building-design/rammed-earth/>)



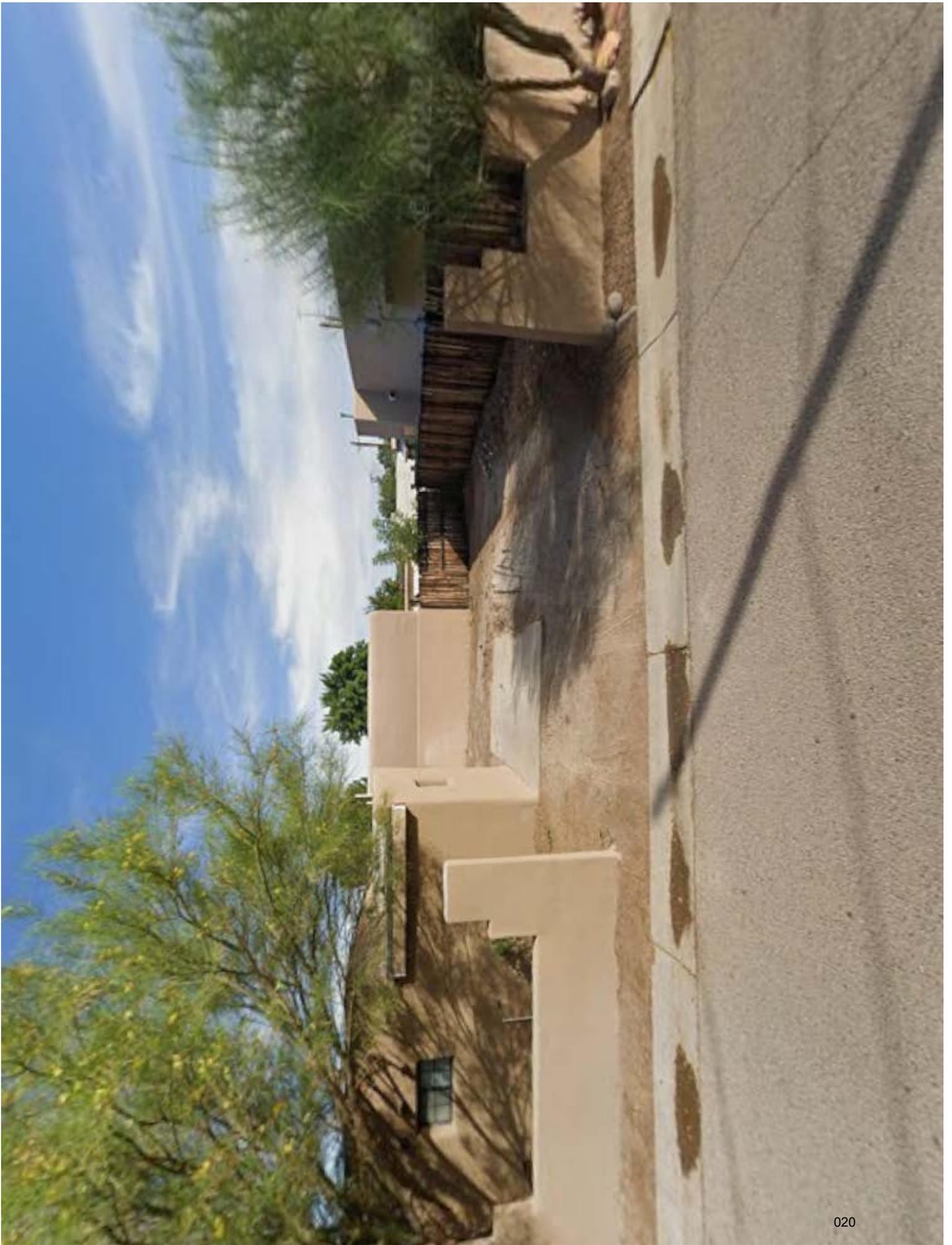
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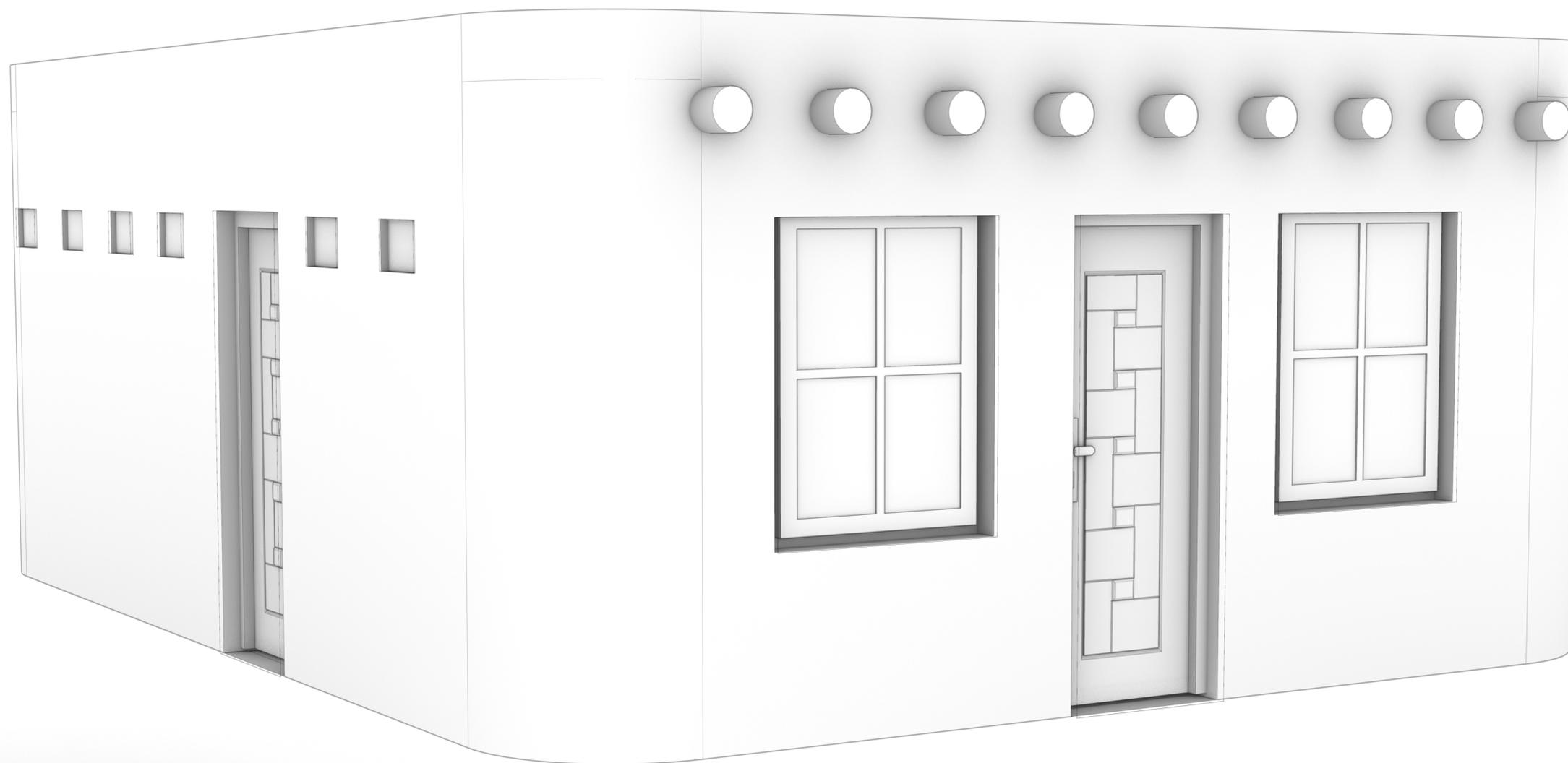
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CALLE DE MEDANOS

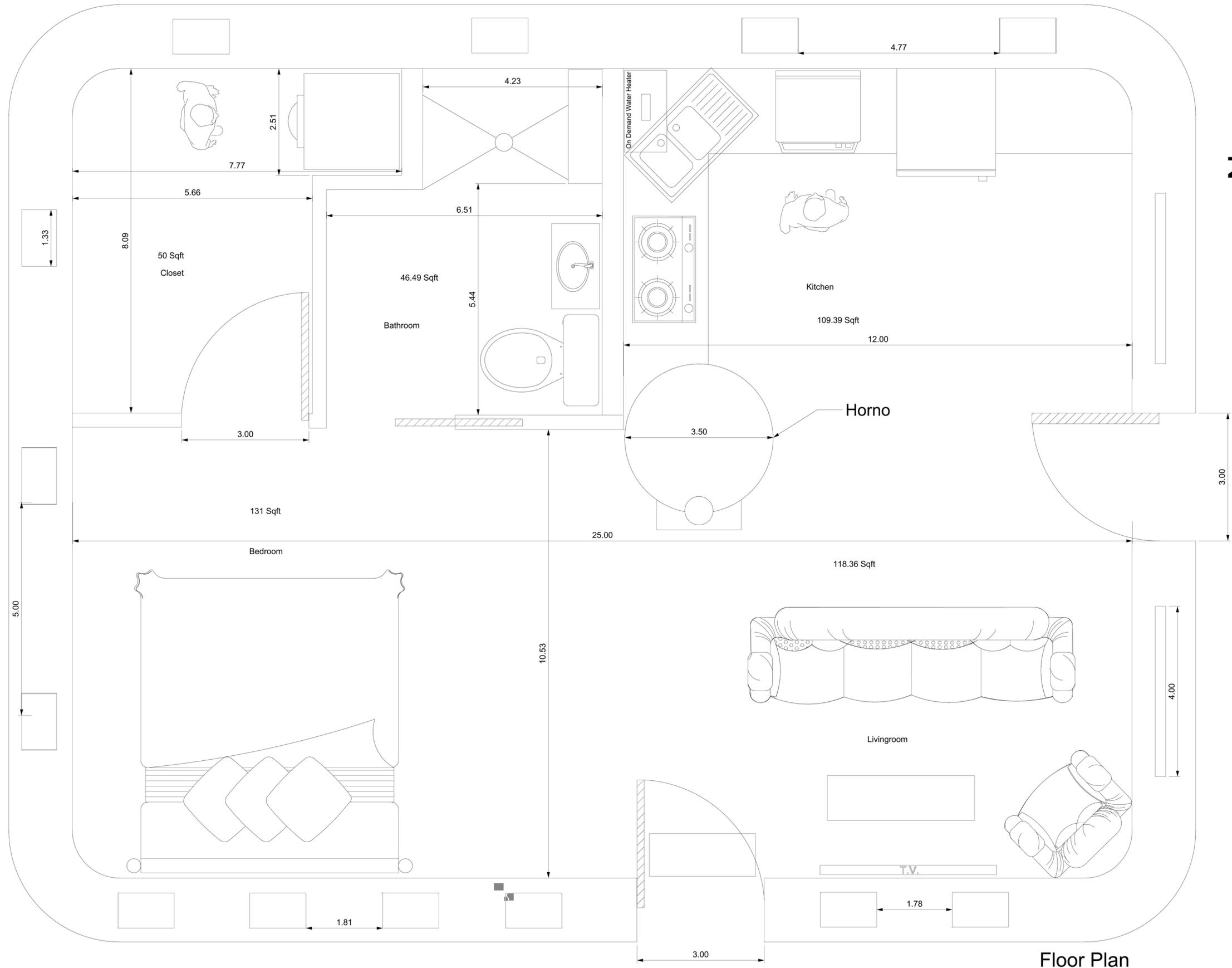
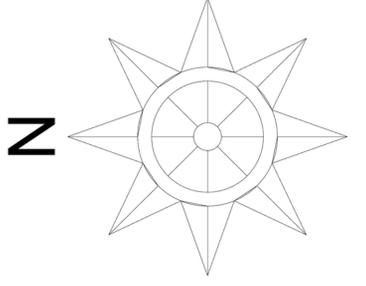
CALLE DE GUADALUPE





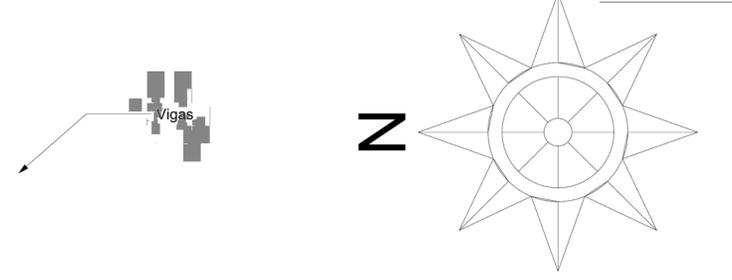
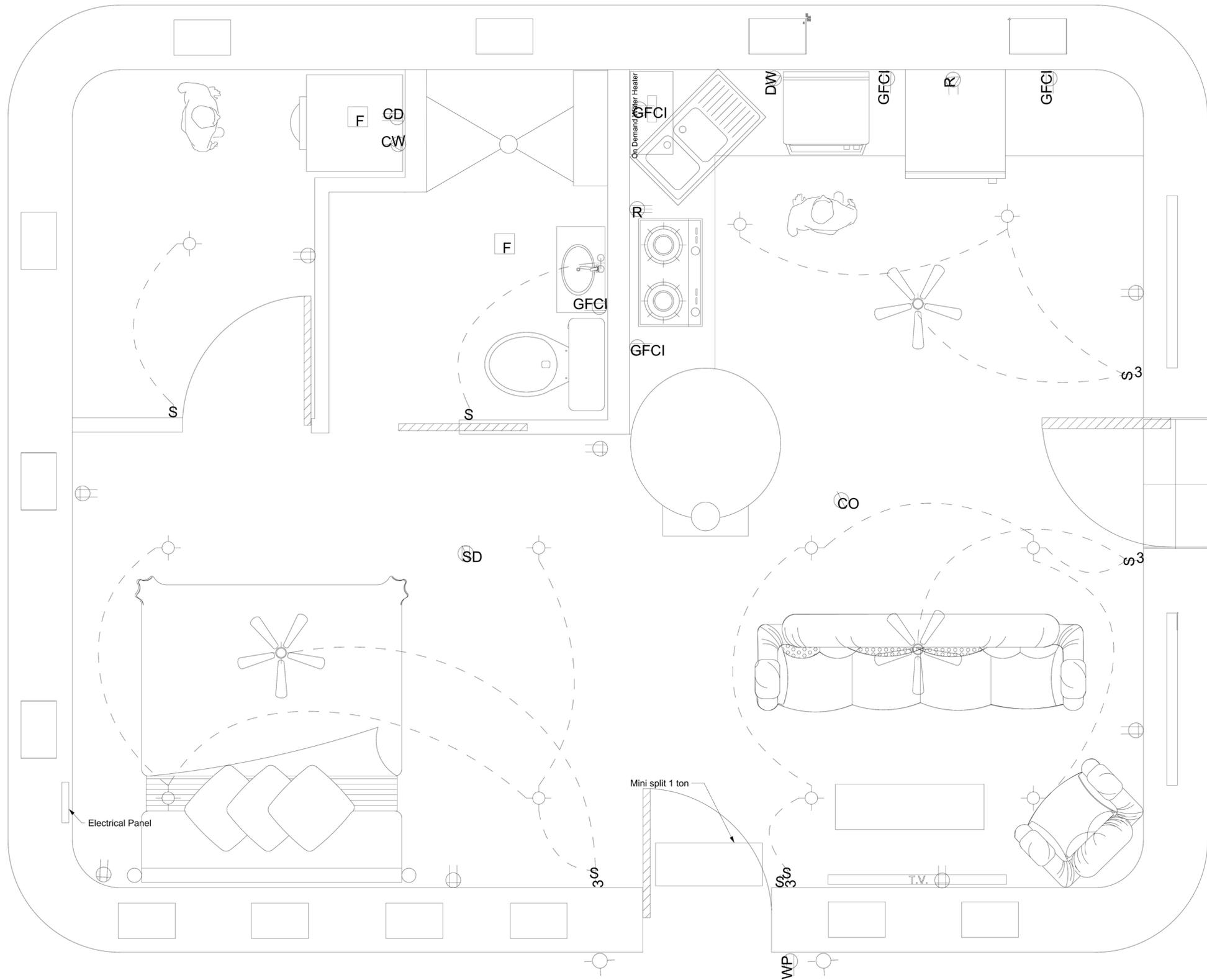
Cover

Earthling Ingenuity	Drawn for: Richard Moreno	Scale: NTS
AircreteHarry.com	Address: 2185 Calle De Guadalupe,	OCT, 2025
Drawn by: Harry	Las Cruces, NM 88005	Page: Cover



Floor Plan

Earthling Ingenuity AircreteHarry.com Drawn by: Harry	Drawn for: Richard Moreno	Scale: 1:1
	Address: 2185 Calle De Guadalupe, Las Cruces, NM 88005	OCT, 2025
	Page: 1 of 8	



ELECTRICAL LEGEND

Standard Duplex			Toggle Switch
Split Duplex			Dimmable Switch
Weatherproof Duplex			3-Way Switch
Duplex Ground Fault Circuit Interrupter			4-Way Switch
Switched Duplex			3-Way Dimmable Switch
240Volt			Double Pole Switch
240 Volt Clothes Dryer			Sconce Light
Dishwasher			Vanity Light
Clotheswasher			Wall mount light
Electric Range			Suspended
Cooktop			Surface mount
Refrigerator			Power box
Floor Outlet			Exhaust Fan
Cable TV			Network drops
Smoke Detector			
CO Detector			

HEIGHT OF ELECTRICAL OUTLETS & SWITCHES

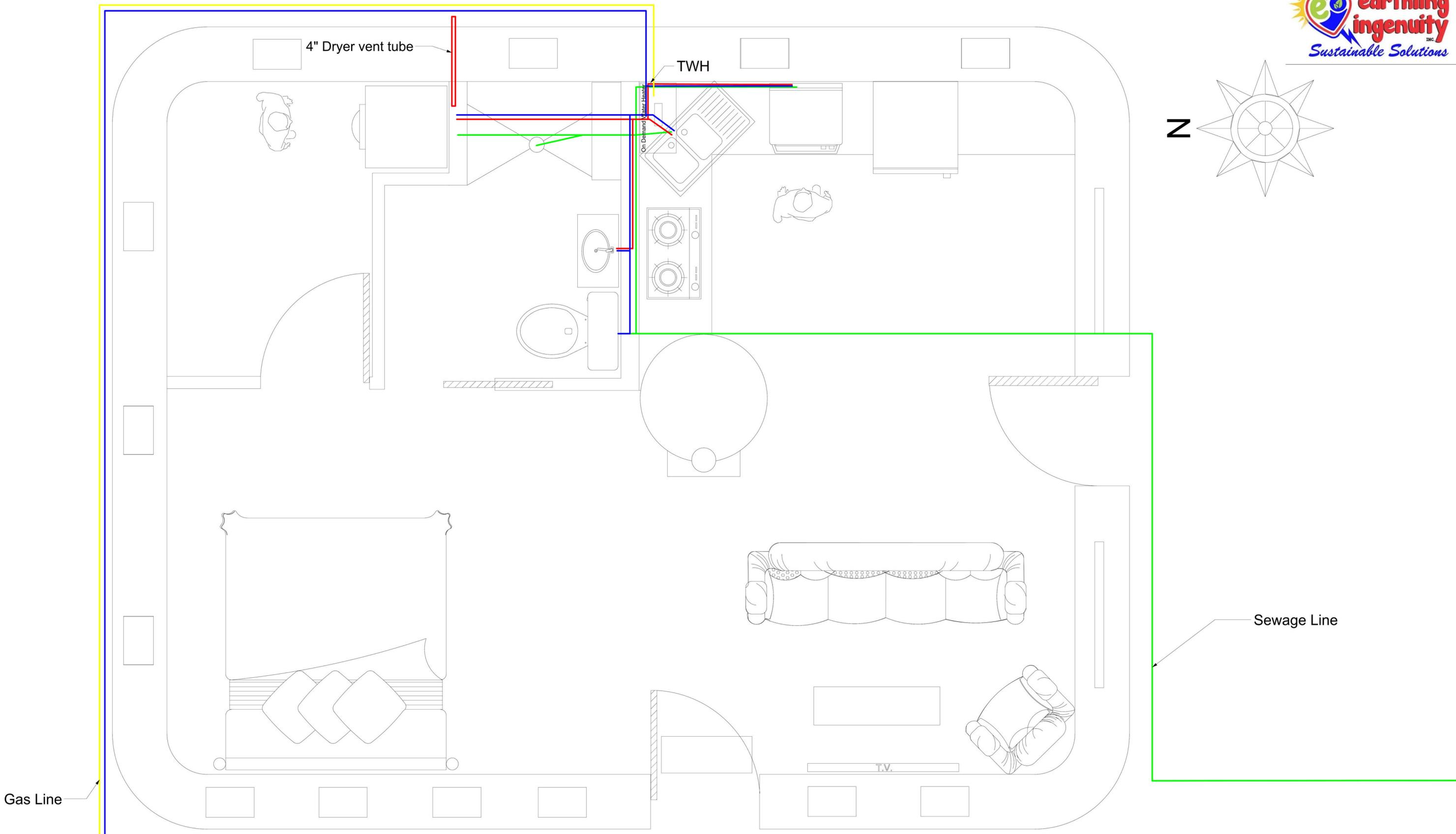
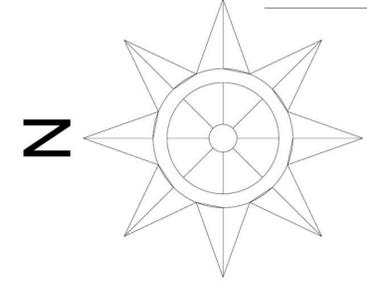
Outlet above counter: 4'-0", 3'-6" for accessibility
 Switch on latch side of door: 4'-0" maximum for accessibility 2'-1/2" minimum - ADA accessibility
 Outlet above floor: 18" for ADA accessibility

NUMBER OF CONVENIENCE OUTLETS

MINIMUM PER NEC (National Electric Code)

Electrical

Earthling Ingenuity AircreteHarry.com Drawn by: Harry	Drawn for: Richard Moreno Address: 2185 Calle De Guadalupe, Las Cruces, NM 88005	Scale: 1:1 OCT, 2025 Page: 2 of 8
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Gas Line

Water Line In

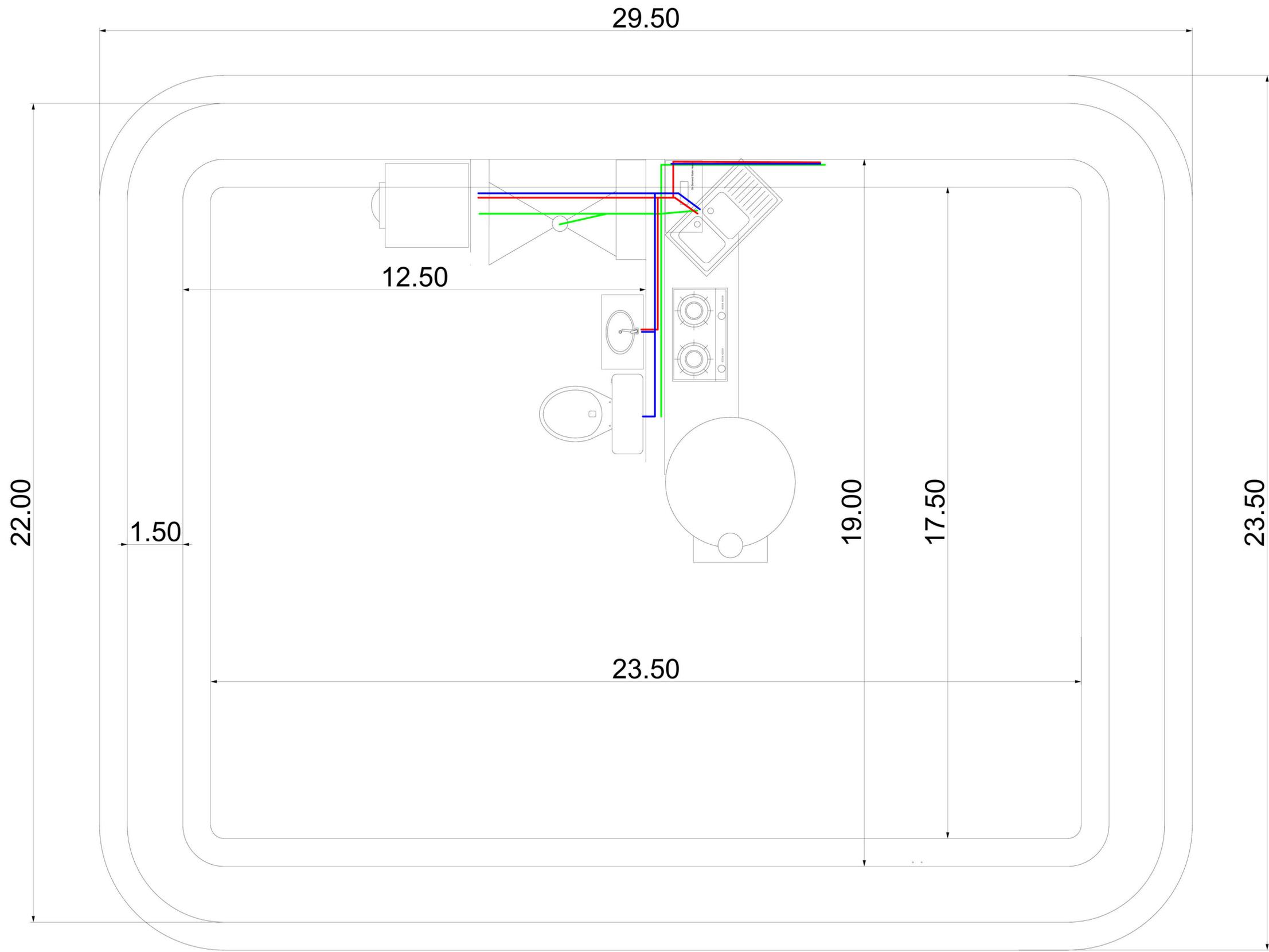
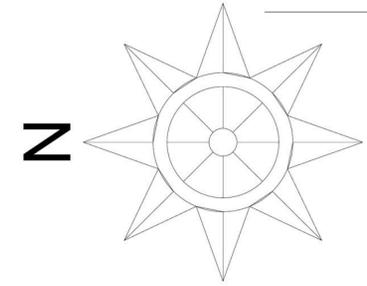
4" Dryer vent tube

TWH

Sewage Line

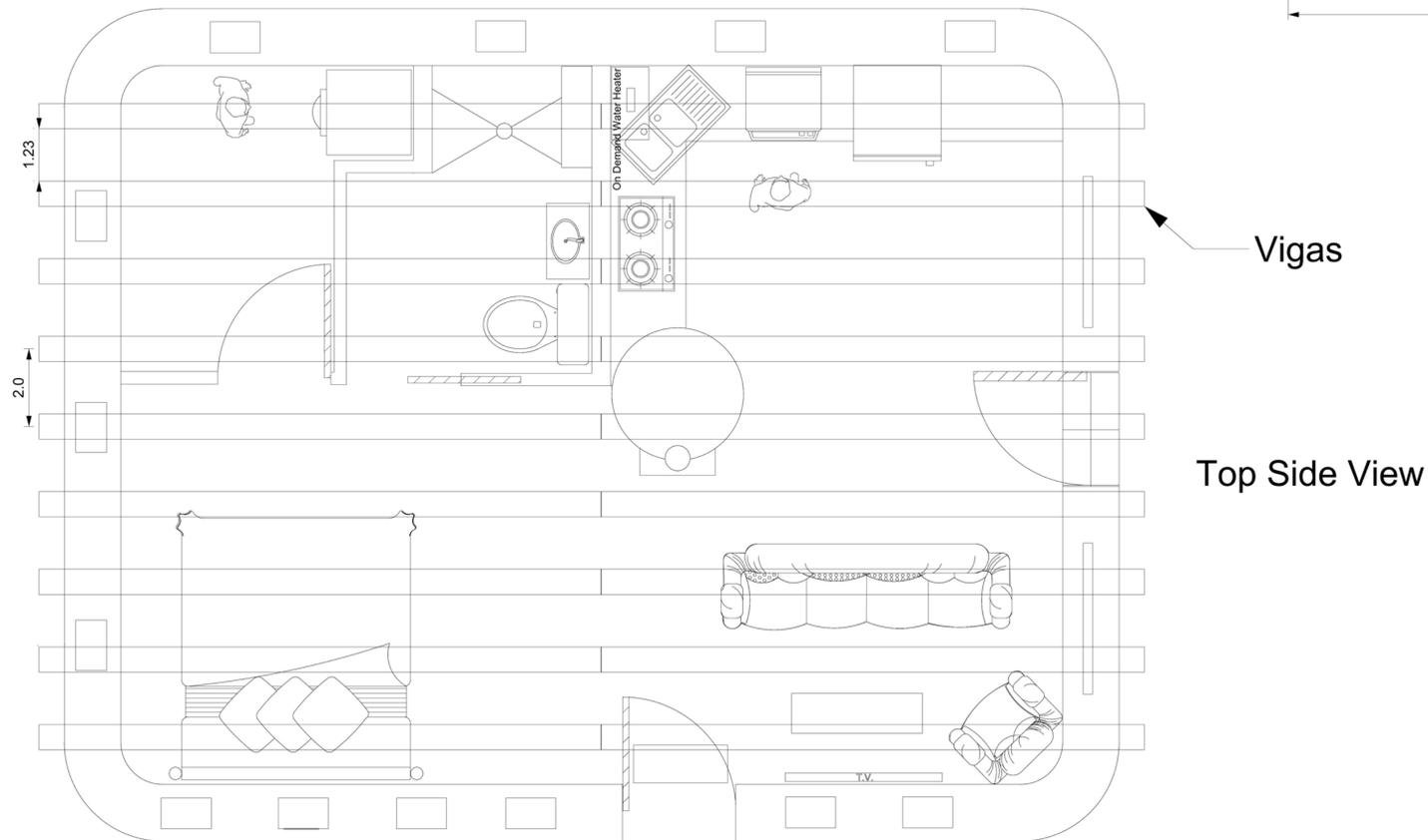
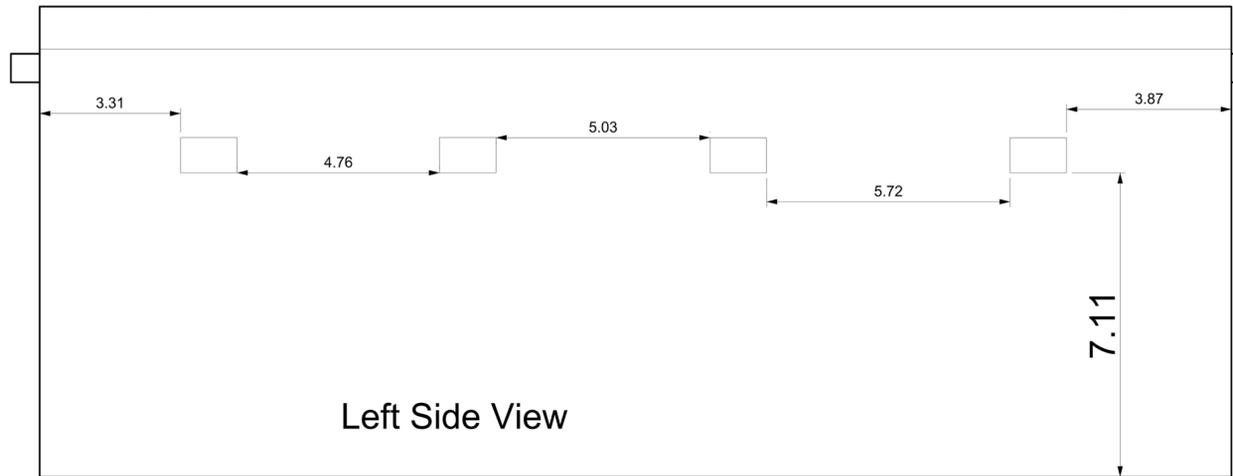
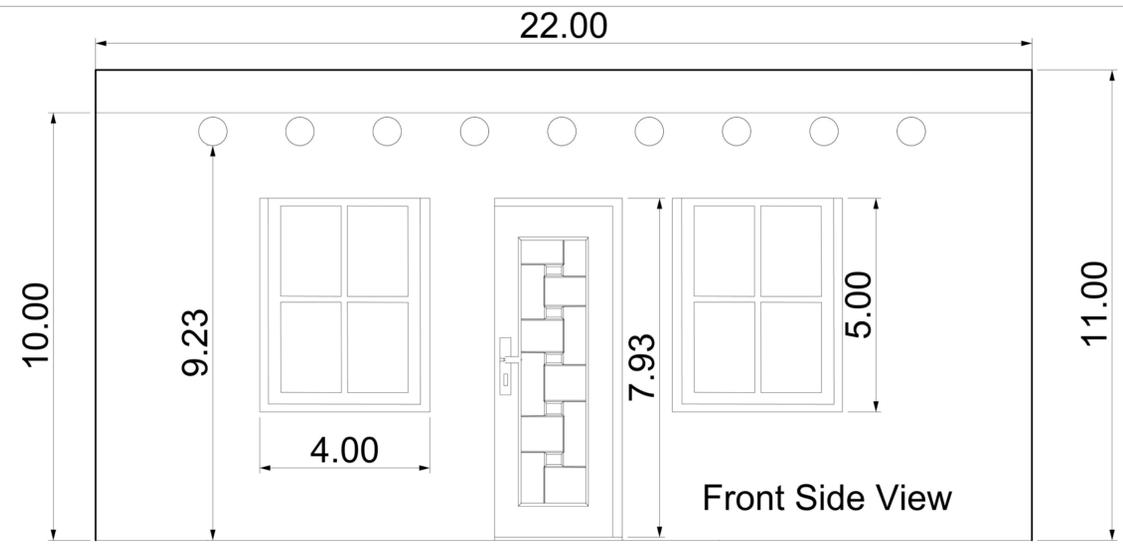
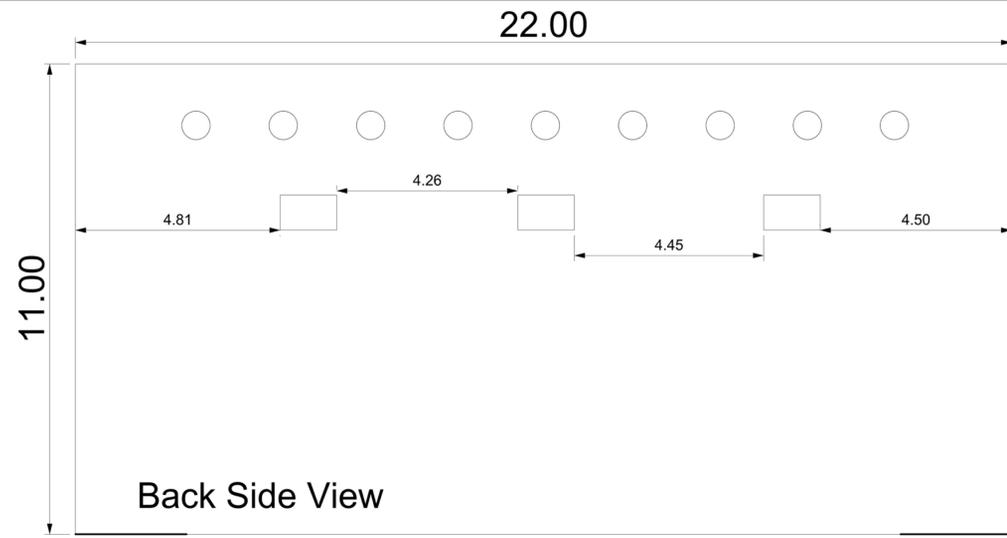
Plumbing

Earthling Ingenuity AircreteHarry.com Drawn by: Harry	Drawn for: Richard Moreno	Scale: 1:1
	Address: 2185 Calle De Guadalupe, Las Cruces, NM 88005	OCT, 2025
	Page: 3 of 8	



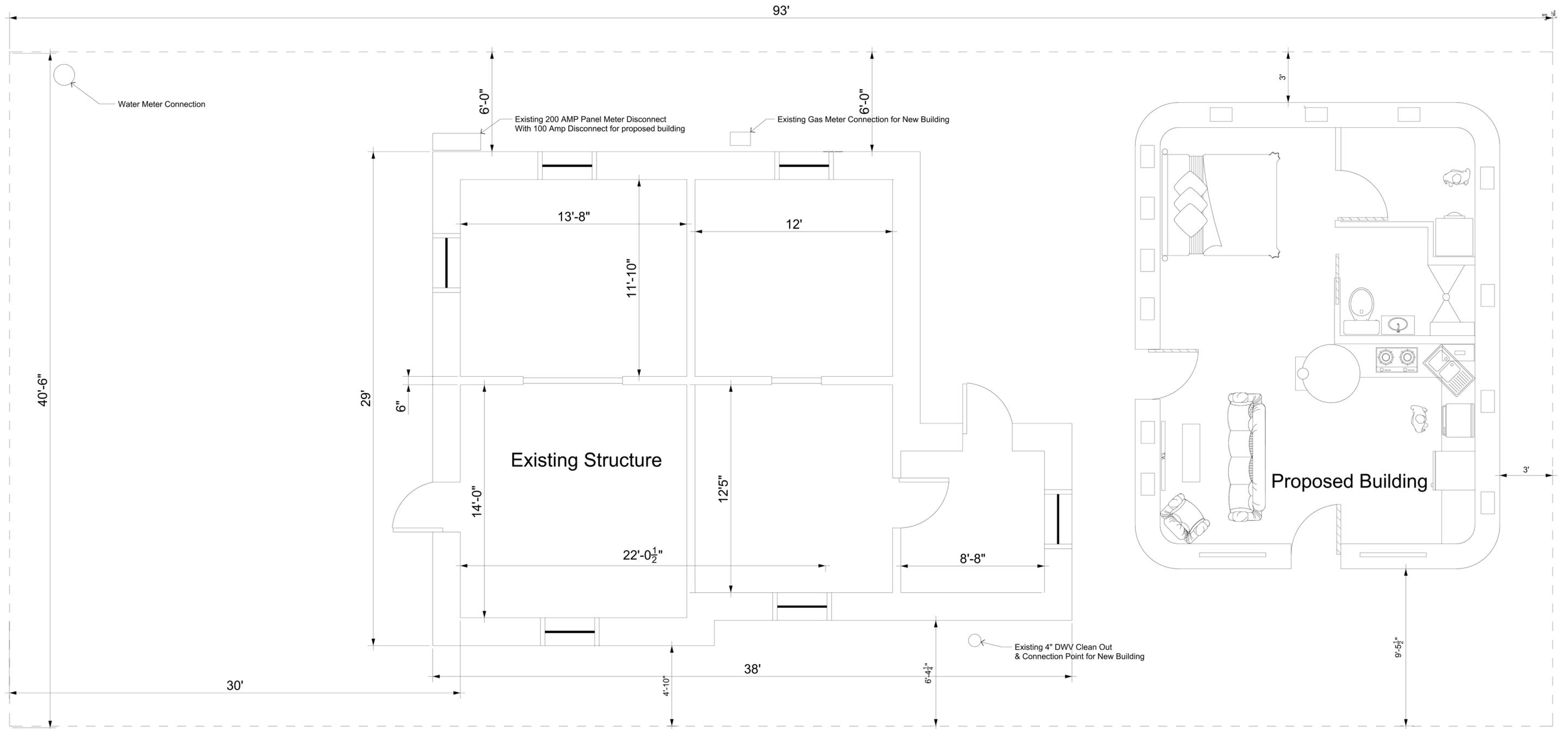
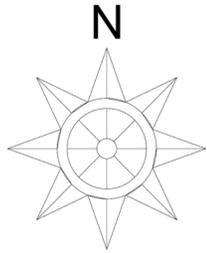
Foundation Plan

Earthling Ingenuity	Drawn for: Richard Moreno	Scale: 1:1
AircreteHarry.com	Address: 2185 Calle De Guadalupe,	OCT, 2025
Drawn by: Harry	Las Cruces, NM 88005	Page: 4 of 8



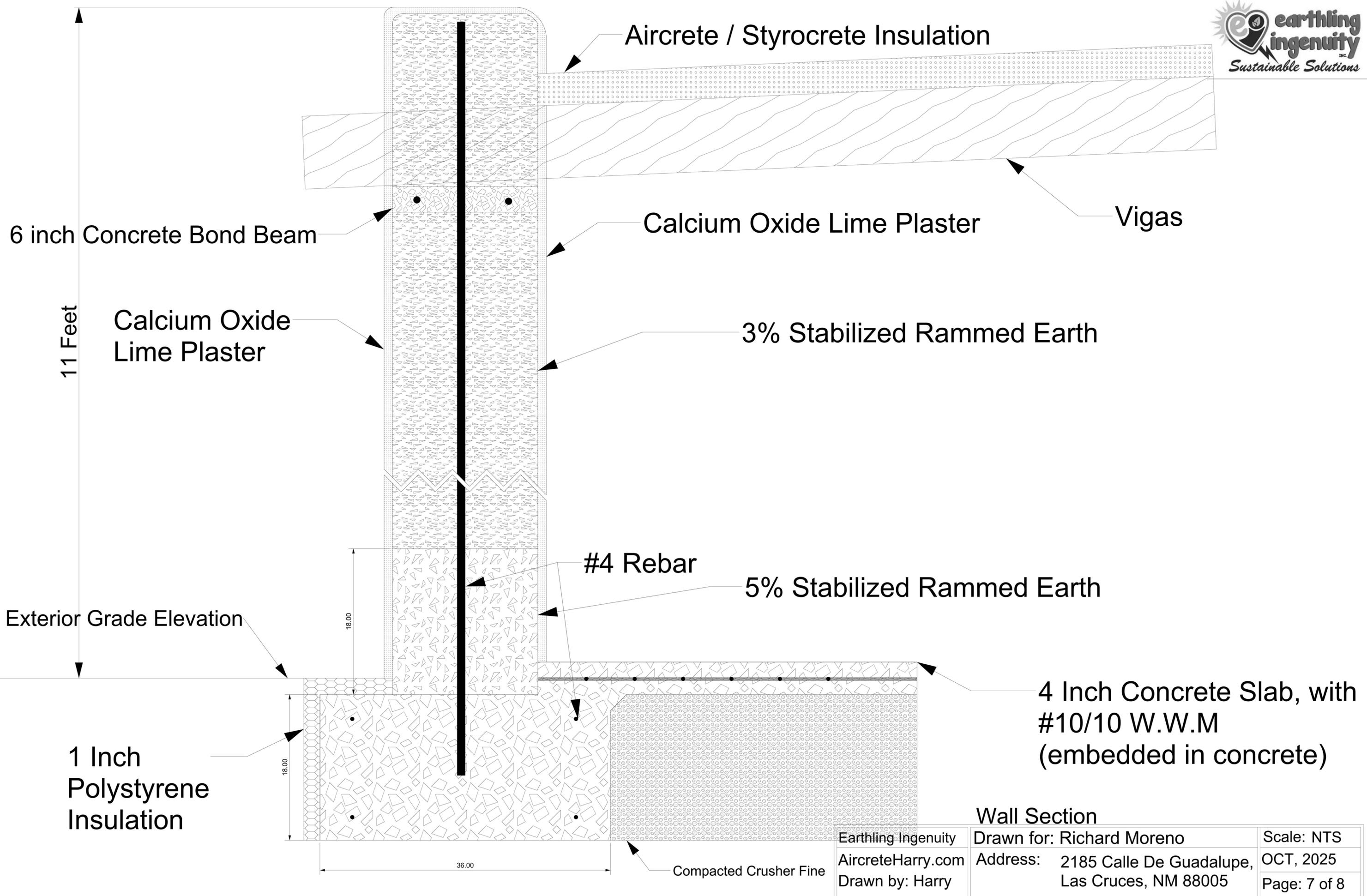
Elevation

Earthling Ingenuity	Drawn for: Richard Moreno	Scale: NTS
AircreteHarry.com	Address: 2185 Calle De Guadalupe,	OCT, 2025
Drawn by: Harry	Las Cruces, NM 88005	Page: 5 of 8

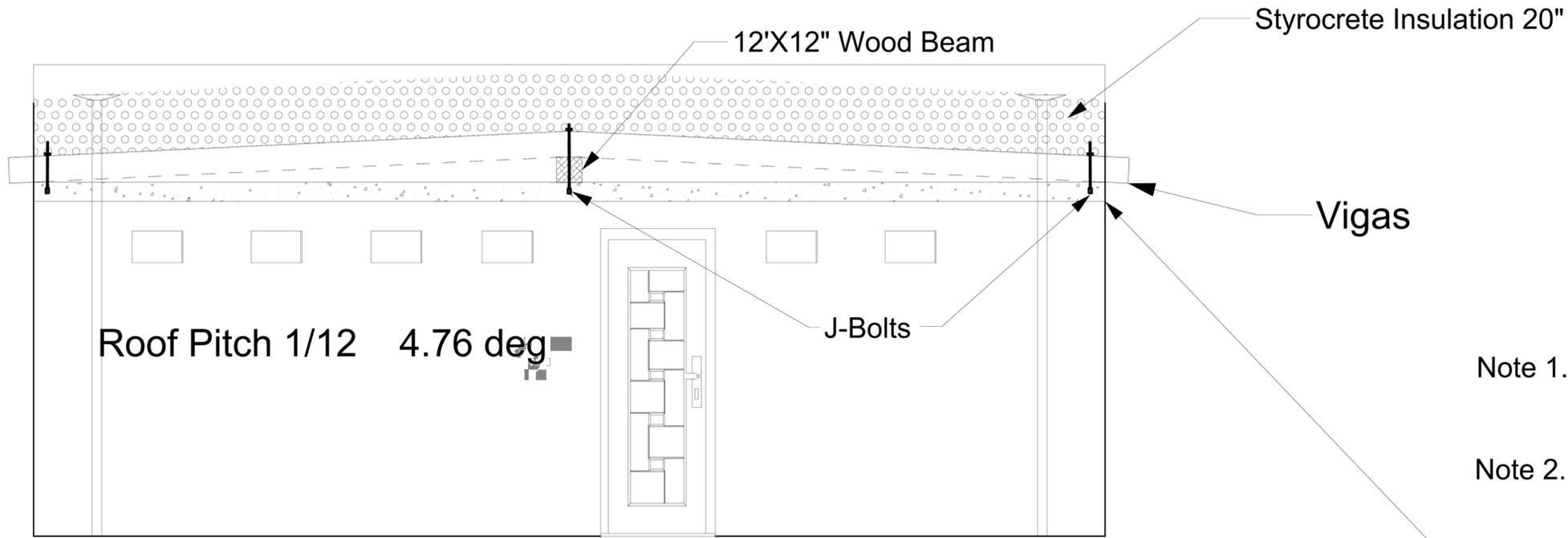
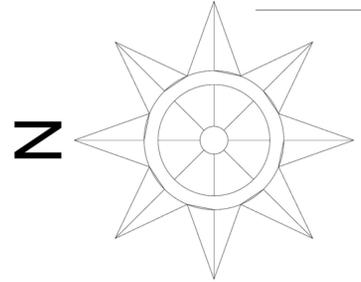


Site Plan

Earthling Ingenuity	Drawn for: Richard Moreno	Scale: 1:1
AircreteHarry.com	Address: 2185 Calle De Guadalupe,	OCT, 2025
Drawn by: Harry	Las Cruces, NM 88005	Page: 6 of 8

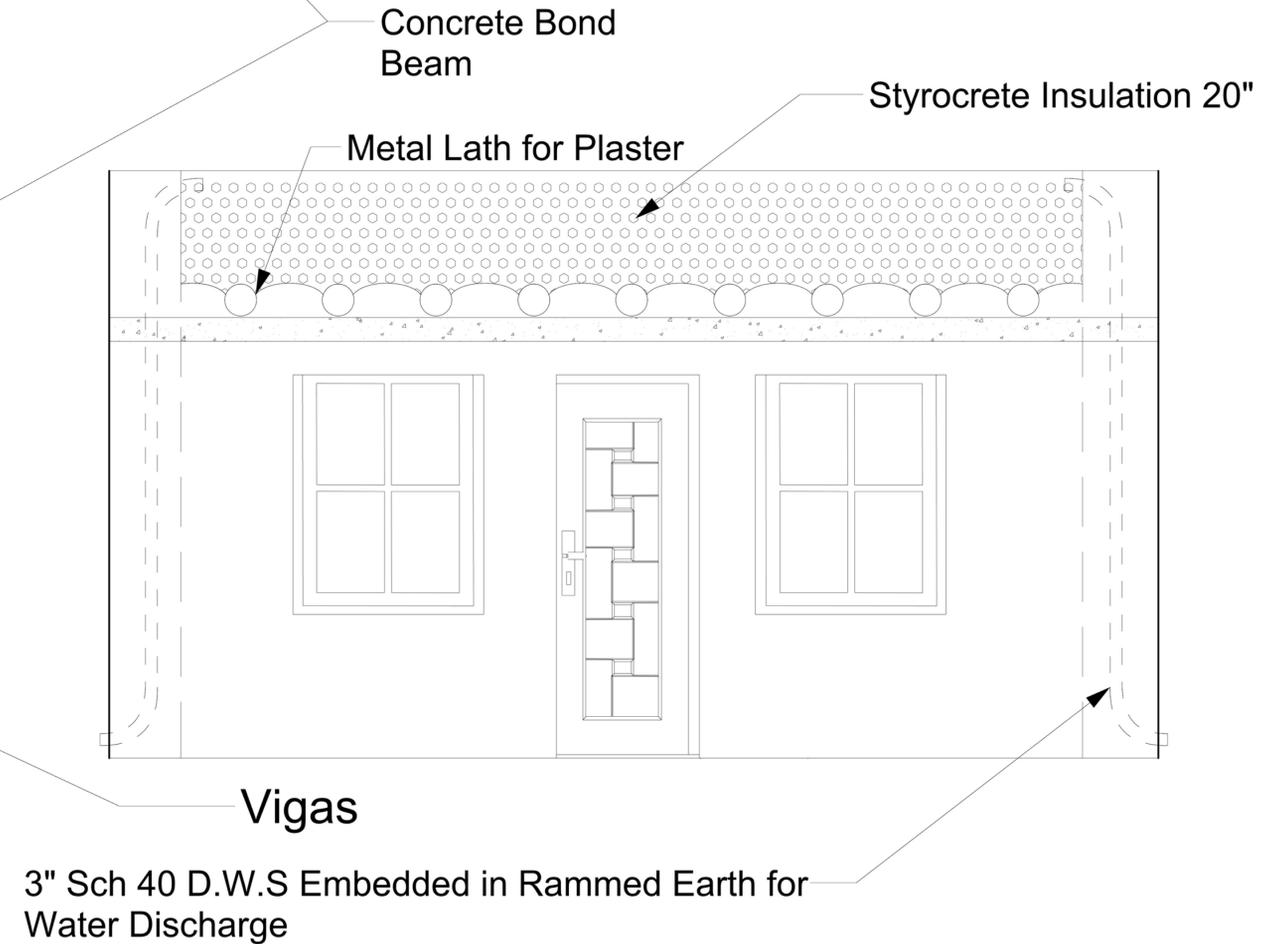
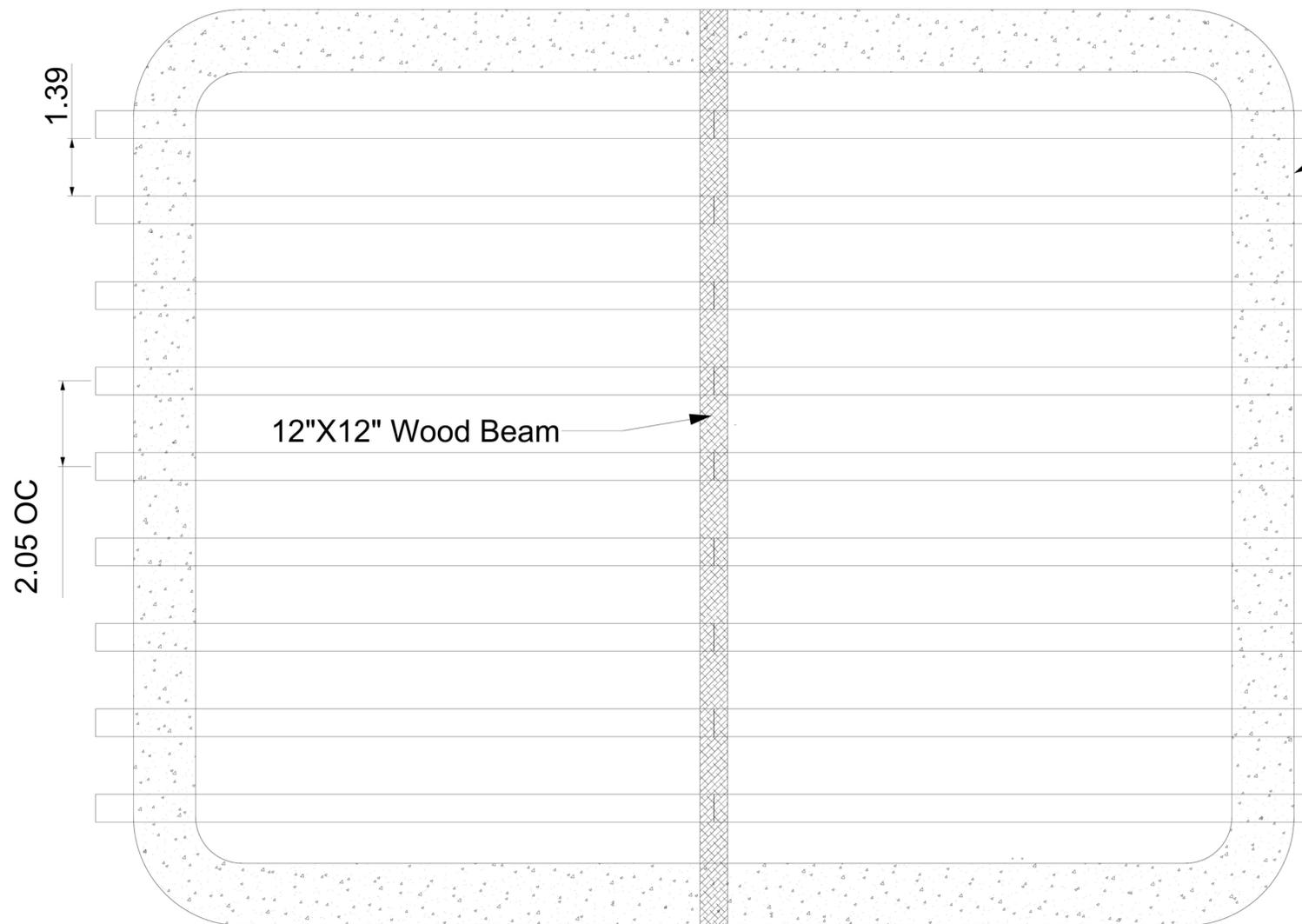


Wall Section	
Earthling Ingenuity AircreteHarry.com Drawn by: Harry	Drawn for: Richard Moreno Address: 2185 Calle De Guadalupe, Las Cruces, NM 88005
Scale: NTS OCT, 2025 Page: 7 of 8	



Note 1. There is 6"x6"x12" 10/10 W.W.M. Matrix Grid Embedded In Styrocrete

Note 2. 90 mil Elastomeric Coating Over Roof and Parapet



Roof Plan

Earthling Ingenuity AircreteHarry.com Drawn by: Harry	Drawn for: Richard Moreno	Scale: 1:1
	Address: 2185 Calle De Guadalupe, Las Cruces, NM 88005	OCT, 2025
		Page: 8 of 8

1113

INCLUDING INFORMATION FOR COUNTY CLERK
 RECORDING OF THIS PLAT IS FOR INFORMATION
 PURPOSES ONLY IN COMPLIANCE WITH SEC. 61-23-28.1
 OF NMSA. 1978 AS AMENDED THIS IS NOT AN APPROVAL
 AS A SUBDIVISION BY THE DONA ANA COUNTY
 COMMISSION AS PROVIDED UNDER SEC. 47-4-4-29.



CALLE DE GUADALUPE

CALLE DE MEDANOS



FEB 05 2003
 4:30 PM
 1113

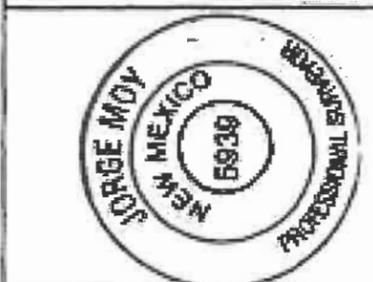
NOTE: THIS SURVEY IS BASED ON EXISTING POSSESSION LINES.



NOTES
 *FLOOD ZONE "A" AREAS DETERMINED TO BE CHANGED
 500-YEAR FLOOD PLAIN, IN MAP NO. J5007300634 E.
 EFFECTIVE SEPTEMBER 27, 1991

INFORMATION IN THE PREPARATION OF THIS PLAT DERIVES FROM
 RECORD FILED OCTOBER 27, 2001, IN BOOK 298, PAGES 509-510.
 DONA ANA COUNTY RECORDS

1113



PLAT OF SURVEY
 SHOWING THE LOCATION OF IMPROVEMENTS
 ON A 0.092 ACRE TRACT
 IN SECTION 25, T.23S., R.1E., N.M.P.M.
 OF THE U.S.R.S. SURVEYS
 BEING U.S.R.S. TRACT 11A-30A
 TOWN OF MISILLA
 DONA ANA COUNTY
 NEW MEXICO

I, JORGE MEY, A NEW MEXICO PROFESSIONAL SURVEYOR CERTIFY
 THAT I CONDUCTED AND AM RESPONSIBLE FOR THE SURVEY, THAT
 THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
 AND BELIEF, AND THAT THIS SURVEY AND PLAT MEET THE NECESSARY
 STANDARDS FOR SURVEYS MADE BY MEY.

Jorge Mey
 JORGE MEY
 N.M.P.S.

THESE INFORMATION FOR COUNTY CLERK
 PROPERTY OWNER: JORGE MEY
 PROPERTY LOCATION: TOWN OF MISILLA

MOY SURVEYING INC.
 414 N. DOWNTOWN MALL
 LAS CRUCES, NEW MEXICO
 88001
 PHONE: (505) 525-9603
 FAX: (505) 524-3230

JOB NO. 02-1985
 DRAWN BY ALVIN B. GARCIA
 FIELD BY PETE ALBERT
 DATE 11/18/02 SCALE 1" = 20'



Executive Summary

To: Board of Trustees
From: Russell Hernandez, Mayor
Date: For Regular Meeting 12/08/2025
Re: Discussion/Approval: Commemorative Park Engineering Proposal

Summary of items to be considered

The following items are presented for the Board's consideration regarding authorization of engineering services for the Commemorative Park project:

Project Purpose

- To advance planning, design, and engineering for the development of Commemorative Park.
- To establish a detailed and buildable plan that reflects community goals, commemorative themes, accessibility needs, and site constraints.

Engineering Scope of Work

- **Site Survey & Assessment**
Evaluation of existing conditions, grading, utilities, drainage, soils, and access.
- **Conceptual & Final Design**
Park layout, pathways, landscaping, memorial/interpretive features, lighting, pedestrian access, ADA compliance, and integration of community elements.
- **Civil Engineering Plans**
Construction drawings, specifications, drainage plans, structural elements, utility connections, and cost estimates.
- **Permitting Support**
Preparation of documents needed for regulatory, zoning, and building approvals.
- **Project Management**
Coordination with Town staff, **stakeholder meetings**, schedule management, and preparation of bid-ready materials.

Financial Impact:

- The engineering proposal is expected to be funded through Capital Outlay Funding.
- The total engineering projected cost submitted is **\$47,455.00**
- Funds have been identified and are available for this stage of the project.

Supporting Documentation:

- See Attached



December 2, 2025

#9334719

Mr. Russell Hernandez, Mayor
Town of Mesilla
2231 Avenida de Mesilla
Mesilla, New Mexico 88046

RE: Professional Civil Engineering Services Proposal – Town of Mesilla Commemorative Park Improvements, Mesilla, New Mexico

Dear Mr. Hernandez:

This letter and accompanying Critical Path Scope of Work, Schedule, and Compensation is Souder, Miller & Associates' (SMA) proposal based upon conversations with SMA, for professional civil engineering services for the above referenced site.

Project Overview:

SMA will provide Construction Drawing Design services for the Town of Mesilla Commemorative Park Improvements Project to be located on a +/- 1.92-acre parcel near the north corner of Avenida de Mesilla and University Avenue in Mesilla, NM. This will include the preparation of a complete set of civil engineering Construction Drawings including general notes, horizontal control plan, grading plan, detail callout plan, Utility Plan, Project Details, Striping and Signage Plan and Erosion Control Plan in accordance with the most current version of the Town of Mesilla Design Standards. The scope of work includes site design for the area immediately adjacent to the anticipated monument wall, the area immediately adjacent to the anticipated splash pad and the existing gravel parking lot, the remainder of the park will remain in its current state. Also included are topographic and boundary survey services as well as architectural design of the monument wall. The scope of Civil Design Services as presented herein includes the anticipated regrading of the existing dirt parking lot as well as the grading of the area around the anticipated splash pad and grading of the area around the anticipated monument wall. Splash pad design is a specialty service and shall be completed by others. SMA, if directed, can subcontract the design of the splash pad and add the fee and scope for those services as an amendment to this contract.

Client Provided Information:

SMA will require the following information from the Client:

1. Detailed site plans, prepared by the project architect, that meet Owner requirements and applicable local, state, and federal codes, with accessible routes denoted, all line work complete, closed and accurate, i.e. buildings, parking areas, ADA features, entrances, retaining walls, etc. All information shall be provided in electronic AutoCAD format that SMA can rely on as accurate to complete the civil engineering design Work. If information provided does not meet the above criteria, SMA will return the data for correction. Deadline extensions and additional fees will apply for returned data.
2. Anticipated project utility loads for potable water, wastewater, fire protection, natural gas, electrical service and telecommunication service to be provided respectively by the project

mechanical, electrical and fire protection engineers. If this information cannot be provided, SMA will make general assumptions regarding the general utility demands in order to complete the site design.

3. Record and current deed of the property, previous boundary surveys/ALTA's, previous subdivision information, preliminary site arrangement drawings and/or other record information the client may have in their possession pertaining to the subject property.
4. Detailed site plans, as described in item #1 above, for the entirety of the development.

Budget and Schedule:

Based on the attached detailed statement of work and the items listed above, SMA estimates a total budget of **\$47,455.00**, not including New Mexico Gross Receipts Tax. Please see attached Professional Services Agreement and Exhibit "A" for detailed of scope of work, deliverables, fees and schedule.

Additional services requested beyond the scope of services identified herein will be provided as a separate work order, including a specific scope of work and fee, plus applicable gross receipts tax and is not included as part of the base fee stated above.

This proposal offer may be withdrawn, at the option of SMA, if it has not been accepted within 30-days of its issuance. Souder, Miller & Associates appreciates the opportunity to provide professional consulting services for you. If you have any questions or comments concerning this proposal, please feel free call or email at your convenience.

Sincerely,



MILLER ENGINEERS, INC. d/b/a
SOUDER, MILLER & ASSOCIATES

Michael Johnson, P.E.
Southern NM Civil TS Manager
Michael.johnson@soudermiller.com

Enc (2) – Professional Service Agreement
SMA 2025 Rate and Expense Schedule

**PROFESSIONAL SERVICES AGREEMENT
(Client - Consultant)**

This Agreement is made and entered into this 2nd day of **December, 2025**, between **Town of Mesilla** (hereinafter called CLIENT) and **SOUDER, MILLER & ASSOCIATES, INC.**, (hereinafter called CONSULTANT) a New Mexico C Corporation for the **Town of Mesilla Commemorative Park Improvements Project in Mesilla, New Mexico, SMA Project Number 9334719.**

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

CLIENT hereby engages CONSULTANT to perform the services identified in Exhibit A, for the compensation set forth in same said Exhibit A. Any additional work and corresponding compensation not identified in Exhibit A will be detailed and included in Amendments to this Agreement.

CONSULTANT shall be authorized to commence the Services upon execution of this Agreement, unless otherwise specified herein. CONSULTANT and CLIENT agree that this signature page, together with the Standard Terms and Conditions, and all Exhibits, Attachments and Amendments referred to herein, constitute the entire Agreement relating to the Work.

IN WITNESS WHEREOF, the parties have read and executed this Agreement as of the date first written above.

CLIENT:

Mr. Russell Hernandez, Mayor
Town of Mesilla
2231 Avenida de Mesilla
Mesilla, New Mexico 88046
Tel. (575) 524-3562
Federal Tax ID Number: _____

By: _____

Name: _____

Title: _____

Date: _____

CONSULTANT:

SOUDER, MILLER & ASSOCIATES, INC.
3500 Sedona Hills Parkway
Las Cruces, New Mexico 88011
Tel. (575) 647-0799
Federal Tax ID Number: 85-0336964

By:  _____

Name: Michael Johnson, P.E.

Title: Southern NM Civil TS Manager

Date: December 2, 2025



STANDARD TERMS AND CONDITIONS

1 Scope of Agreement

- 1.1 This Agreement supersedes all prior contracts or agreements, either verbal or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement between the parties with reference to said services.
- 1.2 This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. It cannot be modified or changed by any verbal promise by whosoever made, nor shall any written modification of it be binding on the CLIENT until it has been approved in writing by both the CLIENT and the CONSULTANT and made a part of the Agreement by way of Amendment.
- 1.3 This Agreement shall be governed in accordance with laws of the State of New Mexico.

2 Right of Entry

- 2.1 The CLIENT will provide for right of entry of the CONSULTANT and all his equipment, in order to do the work.
- 2.2 While the CONSULTANT will take reasonable precautions to minimize damage to the property, it is understood by the CLIENT that in the normal course of work some damage to the surface may occur, the correction of which is not part of this Agreement.

3 Invoices

- 3.1 The CONSULTANT's compensation shall be as outlined in Exhibits or Amendments to this Agreement. Invoices may be submitted twice monthly and will include a final bill upon completion of services. Invoices will show total charges accrued during the billing period.
- 3.2 Any invoices or specific charges not disputed in writing by CLIENT within thirty (30) days of issue by CONSULTANT will be considered correct and accepted as valid by CLIENT.
- 3.3 Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. CLIENT agrees to pay a finance charge of two percent (2.0%) per month, or the maximum rate allowed by law, on past due accounts.
- 3.4 Any required Gross Receipts and/or Professional Services Taxes, as may be required by a specific jurisdiction, will be added to CONSULTANT's invoices, in addition to the fees quoted or agreed to, and are payable by the CLIENT. CLIENT may provide a suitable Non-Taxable Transaction Certificate to CONSULTANT in lieu of payment of tax if permissible by the jurisdiction.
- 3.5 CLIENT will compensate CONSULTANT for any expenses incurred to recover any invoiced amount that remains unpaid after 60 days. These costs may include both costs incurred internally by CONSULTANT or external fees charged by third-party collections placement agencies, attorneys, court costs or other resources. Said fees may in some cases exceed the principal of the amount owed.

- 3.6 If any invoiced amount remains unpaid after forty-five (45) days CONSULTANT may elect to cease work immediately; CONSULTANT will not be responsible for any loss to CLIENT resulting from this stoppage. Further, if, at any time during the course of the project any invoiced amount remains unpaid after forty-five (45) days, CONSULTANT may require CLIENT to provide an irrevocable letter of assignment of credit from a financial institution and in a form acceptable to the CONSULTANT in an amount to be determined by the CONSULTANT up to and including any remaining un-invoiced balance of the project and any outstanding invoice(s). Said credit line may be accessed at the discretion of the CONSULTANT for payment of any overdue invoices.
- 3.7 CLIENT will provide CONSULTANT three references for creditworthiness. These references should be active accounts within the last year and of a similar or higher value of credit than the estimated fee for work anticipated to be completed under this Agreement.

4 Ownership and Transfer of Documents

- 4.1 All reports, boring logs, field data, field notes, drawings and specifications, calculations, estimates, laboratory test data, and other documents prepared or furnished by the CONSULTANT, as instruments of service, whether electronic or printed, shall remain the property of the CONSULTANT whether or not the Project is completed. As such, CONSULTANT, who shall be deemed the author, shall retain all common law, statutory law, and other rights, including copyrights. CLIENT may make and retain copies for information reference in connection with the Project. However, such copies are not intended or represented to be suitable for reuse by the CLIENT or others on any other project and may not be distributed to third parties or reused for any other project without the prior written consent of CONSULTANT.
- 4.2 Upon CLIENT's payment in full for all Work performed under the Contract Documents, CONSULTANT shall grant CLIENT a license to use the Work Product in connection with the Project, conditioned on CLIENT's express understanding that it's reuse of the Work Product without the CONSULTANT's involvement or consent is at CLIENT's sole risk; and CLIENT agrees to indemnify, defend and hold harmless CONSULTANT and anyone working by or through CONSULTANT for all claims, damages, losses and expenses arising out of any such reuse without CONSULTANT's consent.
- 4.3 The CLIENT agrees that all documents and other work furnished to the CLIENT or his agents, which is not paid for, will be returned upon demand and will not be used by the CLIENT for any purpose whatsoever.
- 4.4 When transmitting items in electronic media or digital format, the CONSULTANT makes no representations as to long term compatibility, usability, or readability of the items resulting from CLIENT's use of software



application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols. Further, CLIENT agrees that electronic media or digital format will not be transmitted to a third party without the expressed written consent of CONSULTANT.

- 4.5 Acceptance of electronic media or digital format information by CLIENT is made with the understanding that only signed and sealed hard copy(s) are considered final product and that acceptance of these files shall constitute CLIENT acknowledgement that these files may not be accurate or "to scale" and shall not relieve responsibility to determine the required dimensions, elevations, details and relationships of the provided data.

5 Standard of Care

- 5.1 Services performed by the CONSULTANT under this Agreement will be conducted in a manner consistent with and limited to that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.
- 5.2 CLIENT and CONSULTANT agree to implement commercially reasonable measures to secure the exchange and storage of electronic documents, ensuring protection against unauthorized access, breaches, or loss.
- 5.3 CONSULTANT shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence CONSULTANT cannot ascertain.
- 5.4 Surveying services performed by the CONSULTANT follow the general intent of Section D "Model Standards for Construction Layout Surveys" of the National Society of Professional Surveyors (NSPS).

6 Allocation of Risk

- 6.1 The CLIENT agrees to limit the CONSULTANT's liability to the CLIENT, and anyone claiming by, through or under the CLIENT, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of CONSULTANT's services or this agreement regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery such that the total aggregate liability shall not exceed \$25,000 or the total of CONSULTANT's fees for the associated task or phase, whichever is greater. This limitation shall not apply to the extent the damage is paid under CONSULTANT's commercial general liability policy. In any case the time period for any damage claims will not exceed three (3) years after the date of the final invoice.

7 Sole Remedy

- 7.1 Notwithstanding anything to the contrary contained herein, CLIENT agrees that its sole and exclusive claim, demand, suit, judgment or remedy against the

CONSULTANT shall be asserted against the CONSULTANT's corporate entity and not against its shareholders, directors, officers or employees.

8 Insurance

- 8.1 The CONSULTANT represents and warrants that it and its agents, staff and sub-consultants employed by it is and are protected by worker's compensation insurance and that the CONSULTANT has such coverage under professional liability, public liability and property damage insurance policies which the CONSULTANT deems to be adequate.
- 8.2 CONSULTANT carries professional liability insurance of at least \$1,000,000.
- 8.3 Certificates for all such policies of insurance shall be provided to CLIENT upon request in writing. Within the limits and conditions of such insurance, the CONSULTANT agrees to indemnify and save CLIENT harmless from and against any loss, damage, or liability arising from any negligent acts by the CONSULTANT, its agents, staff, and sub-consultants employed by it, to the proportionate extent caused by such negligence. The CONSULTANT shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance.
- 8.4 The CONSULTANT shall not be responsible for any loss, damage, or liability arising from any acts by CLIENT, its agents, staff, and other consultants employed by it.
- 8.5 CLIENT and CONSULTANT mutually waive any right of subrogation against each other for damages covered by property insurance during and after the completion of the project.

9 Indemnification

- 9.1 It is expressly understood and agreed between CONSULTANT and CLIENT, that CONSULTANT shall indemnify the CLIENT for all losses, damages, claims, actions, or demands resulting from the CONSULTANT's negligent actions or inactions as a result of this Agreement to the proportionate extent that such damages are caused by CONSULTANT's negligence or willful misconduct. Similarly, CLIENT shall indemnify the CONSULTANT for all losses, damages, claims, actions, or demands to the extent caused by CLIENT's willful misconduct or negligent acts, errors or omissions as a result of this Agreement.

10 Termination

- 10.1 This Agreement may be terminated by either party upon ten (10) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof or for convenience. Termination for substantial failure shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, CONSULTANT shall be paid for services performed up to the termination notice date including both billed and unbilled costs.
- 10.2 Additionally, it is mutually agreed that both parties will refrain from soliciting and/or hiring each other's employees within one (1) year after completion of all



tasks assigned under this Agreement and/or termination of the Agreement, whichever occurs later.

11 Confidentiality of Information

- 11.1 Except as required by law or this Agreement, or requested by the CLIENT, the CONSULTANT will communicate with and submit work products only to the CLIENT and parties specifically designated by the CLIENT. The CLIENT is responsible for all regulatory agency submittals and public health officials' notifications.
- 11.2 Information required by law to be released to public health officials or regulatory agencies will be provided with prior written notice to CLIENT, unless prohibited by law.

12 Severability

- 12.1 CLIENT and CONSULTANT have entered into this Agreement of their own free will, to communicate to one another mutual understandings and responsibilities. Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.
- 12.2 However, CLIENT and CONSULTANT will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

13 Changed Conditions

- 13.1 The scope of services set forth in this Agreement is based on facts known at the time of execution of this Agreement. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that the scope of services should be redefined.
- 13.2 CONSULTANT will promptly inform CLIENT in writing of such situations, and if the facts discovered constitute a material change in Project assumptions, the parties shall promptly and in good faith enter into renegotiation of this Agreement to help permit CONSULTANT to continue to meet CLIENT's needs. If renegotiated terms cannot be agreed to, CLIENT agrees that CONSULTANT has an absolute right to terminate this Agreement. No payment for services beyond those described in the original scope will be authorized without a written amendment to this Agreement.

14 Consequential Damages

- 14.1 To the fullest extent permitted by laws and regulations, and except as might apply to Section 10.2, CLIENT and CONSULTANT waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential or punitive damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, whether it was committed by the CLIENT or CONSULTANT, their employees, agents, or subcontractors. Consequential

damages include, but are not limited to, loss of use and loss of profit.

15 Defects in Service

- 15.1 CLIENT and CLIENT's personnel, contractors and sub-contractors shall promptly report to CONSULTANT any defects or suspected defects in CONSULTANT's work, in order that CONSULTANT may take prompt, effective measures which in CONSULTANT's opinion will minimize the consequences of a defect in service.
- 15.2 Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of the other party, and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, acts of God and other circumstances include, but are not necessarily limited to, unusual weather, floods, epidemics, war, riots, strikes, government restrictions, cyberattacks, lockouts or other industrial disturbances, protest demonstrations, unanticipated site conditions, or inability despite reasonable diligence to supply personnel, equipment or material to the project. Should such acts occur, CLIENT and CONSULTANT shall utilize their best efforts to overcome the resulting difficulties and resume conduct of services called for herein as soon as reasonably possible.
- 15.3 Delays within the scope of this provision that cumulatively exceed forty-five (45) calendar days shall, at the option of either party, make this Agreement subject to renegotiation or termination.

16 Information Provided by Others

- 16.1 CONSULTANT shall indicate to CLIENT the information needed for rendering of services hereunder, and CLIENT shall provide to CONSULTANT such information as is available to CLIENT. CLIENT recognizes that it is impossible for CONSULTANT to assure the sufficiency of such information, either because it is impossible to do so, or because of errors or omissions which may have occurred in assembling the information.
- 16.2 Accordingly, CLIENT waives any claim against CONSULTANT and agrees to defend, indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to CONSULTANT by CLIENT.
- 16.3 CLIENT accepts that any utility locations incorporated into design documents reflect the relative accuracy of the provider and/or utility owner. Unless otherwise specified in the scope of work, CONSULTANT has not verified indicated locations (or lack of) from any utility providers and hence cannot be presumed to guarantee the absence, presence or authoritative location of any utility.
- 16.4 Accordingly, CLIENT waives any claim against CONSULTANT and agrees to defend, indemnify and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information resulting from uncertainty in utility location.



17 Public Responsibility

- 17.1 CLIENT and CONSULTANT each recognizes that they owe a duty of care to the public that requires them to conform to applicable codes, standards, regulations and ordinances, principally to protect public health and safety.
- 17.2 If CLIENT for any reason decides to disregard CONSULTANT's recommendations in these respects, CONSULTANT shall employ its best judgement in deciding whether or not to notify public officials. CLIENT agrees that such decisions are CONSULTANT's to make, in light of CONSULTANT's public responsibilities as CONSULTANT perceives them and, in any event, CONSULTANT should not be held liable in any respect, and CLIENT waives any claim against CONSULTANT, for failing to report conditions which were CLIENT's responsibility to report.

18 Jobsite Safety

- 18.1 Where construction work is being done on the site, CONSULTANT is responsible solely for his own and his employees' activities on the jobsite, but this shall not be construed to relieve CLIENT or any construction contractors from their responsibility for maintaining a safe jobsite.
- 18.2 Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT or his employees and subcontractors, shall be construed to imply CONSULTANT has any responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the jobsite.
- 18.3 If working with or around a contractor employed by CLIENT, CLIENT agrees that the contractor(s) is solely responsible for jobsite safety and warrants that this intent shall be made evident in the CLIENT's Agreement with the general contractor or other contractors and subcontractors. CLIENT also warrants that CONSULTANT shall be made an additional insured under the contractor's general liability insurance policy.
- 18.4 CONSULTANT strives to maintain a work environment free of harassment, providing equal opportunity and compliance with professional licensing requirements to the benefit of employees and CLIENTS. Profanity, abusive behavior whether physical, verbal or otherwise and violence are all prohibited. At no time and under no circumstances whatsoever shall abusive, violent, destructive, menacing, or harassing behavior be tolerated from or to the CLIENT or any party acting on behalf of the CLIENT. If after identification the behavior is not corrected, the contract may be suspended or terminated without penalty at the discretion of the CONSULTANT.

19 CLIENT's Responsibility to Notify Consultant

- 19.1 CLIENT hereby warrants that, if he knows or has any reason to know or suspect that hazardous materials may exist at the project site, he has so informed CONSULTANT. CLIENT also warrants that he has informed CONSULTANT of such known or suspected hazardous materials type, quantity and location.

- 19.2 When hazardous materials are known, assumed or suspected to exist at the site, CONSULTANT is required to take appropriate precautions to protect the health and safety of his personnel, to comply with applicable laws and regulations, and to follow procedures that CONSULTANT deems prudent to minimize physical risks to employees and the public.

20 Buried and Aboveground Structures and Utilities

- 20.1 In the prosecution of his work, the CONSULTANT will take reasonable precautions to avoid damage or injury to subterranean and aboveground structures and utilities.
- 20.2 The CLIENT agrees to hold the CONSULTANT harmless for any damages to subterranean and aboveground structures and utilities which are not called to the CONSULTANT's attention or correctly shown on the plans furnished.

21 Discovery of Unanticipated Hazardous Materials

- 21.1 Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. CONSULTANT and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services.
- 21.2 CONSULTANT and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for CONSULTANT to take immediate measures to protect health and safety. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered.
- 21.3 CLIENT encourages CONSULTANT to take any and all measures that in CONSULTANT's professional opinion are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of working to protect employees' and the public's health and safety.
- 21.4 In addition, CLIENT waives any claim against CONSULTANT for injury or loss arising from CONSULTANT's discovery of unanticipated hazardous materials or suspected hazardous materials.

22 Discovery of Unanticipated Hazardous Materials on Site Not Belonging to CLIENT

- 22.1 In the event the project site is not owned by CLIENT, CLIENT warrants that he has obtained all necessary permissions for CONSULTANT to enter onto the site and conduct subsurface exploration activities. CLIENT recognizes that it is his responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.
- 22.2 CLIENT also understands that any such discovery may result in recognition of a significant reduction of the property's value, and this may spur the property's owner to institute a claim for compensation for alleged damages even though discovery is not the cause of



damages. Accordingly, in such situations, CLIENT waives any claim against CONSULTANT for injury or loss of any type arising from CONSULTANT's discovery of unanticipated hazardous materials or suspected hazardous materials on a site not owned by CLIENT and CLIENT agrees to indemnify, defend, and hold harmless the CONSULTANT from and against any claim, liability, loss or cost, including reasonable attorney's fees and cost of defense, allegedly arising out of access to or activities conducted on any such property.

23 Aquifer Contamination

23.1 Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading hazardous materials off-site. Because nothing can be done to eliminate the risk of such an occurrence, and because subsurface sampling is a necessary aspect of the work which CONSULTANT will perform on CLIENT's behalf, CLIENT waives any claim against CONSULTANT for injury or loss which may arise as a result of alleged cross-contamination caused by sampling.

24 Contaminated Equipment and Consumables

24.1 Any of CONSULTANT's field or laboratory equipment that becomes contaminated by hazardous materials encountered at the project site must be decontaminated, and contaminated consumables must be disposed of properly. CLIENT agrees to remunerate CONSULTANT for costs associated with decontamination of equipment and disposal and replacement of contaminated consumables.

24.2 In some instances, the fair market value of a piece of equipment, were it not contaminated, together with the cost of properly transporting and disposing of the equipment, may be less than the cost of decontamination. In such instances, CONSULTANT shall notify CLIENT and give CLIENT the option of paying for decontamination, or purchasing the equipment at its fair market value immediately prior to contamination. If CLIENT elects to purchase equipment, CLIENT and CONSULTANT shall enter into a specific agreement for that purpose.

24.3 For purposes of this Agreement, any equipment that cannot be decontaminated shall be considered a consumable.

25 Disposal of Samples

25.1 Soil, rock, water and/or other samples obtained from the Project site are the property of CLIENT. CONSULTANT shall preserve such samples for no longer than thirty (30) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed upon in writing.

25.2 Should any of these samples be contaminated by hazardous substances or suspected hazardous

substances, it is CLIENT's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from CONSULTANT's custody and transporting them to a disposal site. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.

25.3 CLIENT is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures.

26 Contaminated Materials

26.1 CLIENT recognizes that, when it is known, assumed or suspected that hazardous materials exist beneath the surface of the project site, certain waste materials, such as drill cuttings and drilling fluids, should be handled as if contaminated. Accordingly, to protect human health and safety as well as the environment, CONSULTANT will appropriately contain and label such materials; will promptly inform CLIENT that such containerization and labeling has been performed, and will leave the containers on site for proper lawful removal, transport, and disposal by CLIENT. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.

26.2 The decision on how contaminated material will be disposed of or treated is not the responsibility of CONSULTANT. The CONSULTANT can provide information on treatment options and qualified transporters, and advise on the probable range of cost. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.

26.3 Arrangement for transportation of contaminated material and off-site disposal shall be the sole responsibility of the CLIENT.

26.4 Waste analysis and preparation of permits does not constitute direction or decision by CONSULTANT regarding material disposal. By statute, responsibility for this decision resides with the generator and shall not be implied to be transferred to CONSULTANT because of the services provided. CONSULTANT may act as CLIENT's agent in arranging for lawful disposal procedures.

27 Subsurface Risks

27.1 CLIENT recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with the appropriate equipment and experienced personnel under the direction of a trained professional who functions in accordance with a professional standard of care may fail to detect certain conditions, because they are hidden and therefore cannot be considered in development of a subsurface exploration program.

27.2 For similar reasons, actual environmental, geologic and environmental/geotechnical conditions that CONSULTANT properly infers to exist between sampling points may differ significantly from those that actually exist. The passage of time must also be considered, and CLIENT recognizes that, due to natural occurrences or



direct or indirect human intervention at the site or distant from it, actual conditions discovered may quickly change.

- 27.3 CLIENT realizes that nothing can be done to eliminate these risks altogether, but certain techniques can be applied by CONSULTANT to help reduce them to that level deemed tolerable by CLIENT. CONSULTANT is available to explain these risks and risk reduction methods to CLIENT, but in any event, the scope of services included with this Agreement is that which CLIENT agreed to or selected in light of his own risk preferences and other considerations.

28 Failure to Encounter Hazardous Materials

- 28.1 It is possible that exploration may fail to reveal the presence of hazardous materials at sites where hazardous materials are assumed or expected to exist. CLIENT understands that CONSULTANT's failure to discover hazardous materials through appropriate and mutually agreed-upon sampling techniques does not guarantee that hazardous materials do not exist at the site.
- 28.2 Similarly, a site which in fact is unaffected by hazardous materials at the time of CONSULTANT's subsurface exploration may later due to natural phenomena or human intervention become contaminated.
- 28.3 CLIENT agrees that it would be unfair to hold CONSULTANT liable for failing to discover hazardous materials whose exact location is impossible to foretell from the surface, or for failing to discover hazardous materials which in fact did not exist at specific sampling locations at the time such samples were taken. Accordingly, CLIENT waives any claim against CONSULTANT, and agrees to save CONSULTANT harmless from any claims or liability for injury or loss arising from CONSULTANT's failure to detect the presence of hazardous materials through techniques commonly employed for the purpose.
- 28.4 CLIENT also agrees to compensate CONSULTANT for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project costs.

29 Joint and Several Liability

- 29.1 The concept of joint and several liability is basically this: When two or more parties are considered responsible for causing injury or damage, any one of the parties may be made to provide compensation for as much as 100% of the damages assessed. As applied to hazardous materials projects, it is possible that the concept of joint and several liabilities could be construed to make CONSULTANT partly or wholly responsible for damages created directly or indirectly by the hazardous materials. CLIENT agrees that it would be unfair for CONSULTANT to be exposed to such an action, because CONSULTANT had nothing whatsoever to do with the creation of the hazardous condition. Accordingly, CLIENT waives any claim against CONSULTANT, and agrees to defend,

indemnify and save CONSULTANT harmless from any claim or liability for injury or loss arising from application of a joint and several liability concept that would in any manner hold or seek to hold CONSULTANT responsible for creating a hazardous condition or permitting one to exist.

- 29.2 CLIENT also agrees to compensate CONSULTANT for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT's prevailing fee schedule and expense reimbursement policy relative to recovery of direct project cost.

30 Construction Observation

- 30.1 CLIENT recognizes that unanticipated or changed conditions may be encountered during construction. When CLIENT agrees to retain CONSULTANT to observe construction, CONSULTANT agrees to assign to the observation function persons qualified to observe and report on the quality of work performed by contractors, et al.
- 30.2 CLIENT recognizes that construction observation is a technique employed to minimize the risk of problems arising during construction. Provision of construction observation by CONSULTANT is not insurance, nor does it constitute a warranty or guarantee of any type. In all cases, contractors, et al, shall retain responsibility for the quality of their work and for adhering to plans and specifications. Should CLIENT for any reason not retain CONSULTANT to observe construction, or should CLIENT unduly restrict CONSULTANT's assignment of personnel to observe construction, or should CONSULTANT for any reason not perform construction observation during the full period of construction, CONSULTANT shall not have the ability to perform a complete service.
- 30.3 Should the CONSULTANT be prevented from performing a complete service, CLIENT waives any claim against CONSULTANT, and agrees to indemnify, defend and hold CONSULTANT harmless from any claim or liability for injury or loss arising from problems during construction that allegedly result from findings, conclusions, recommendations, plans or specifications developed by CONSULTANT.

31 Opinion of Probable Construction Cost

- 31.1 CLIENT recognizes that CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, competitive bidding or market conditions. Hence CONSULTANT'S opinions of probable costs are to be made on the basis of CONSULTANT's experience; but CONSULTANT cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of probable cost.

32 Reliance by Third Parties

- 32.1 Any information, including but not limited to data, reports, findings, summaries, or recommendations, prepared by CONSULTANT for CLIENT in the course of performing the Services hereunder may not be relied upon by any person or entity other than CLIENT without CONSULTANT's prior written consent. Unless otherwise



agreed, any use of information prepared by the CONSULTANT by anyone other than the CLIENT is entirely at that third party's own risk.

33 Assignment

- 33.1 Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

34 Notices

- 34.1 Any notice required under this Agreement will be in writing and sent to the appropriate party at the address designated in this Agreement, and shall be deemed served if sent by registered or certified mail or hand-

delivered to an officer or authorized representative of the party to whom the notice is directed. All notices shall be effective upon the date of receipt.

35 Dispute Resolution

- 35.1 If any controversy or claim arises out of or relates to this contract, or breach thereof, and if said dispute cannot be settled first through good faith negotiation or mediation within thirty (30) days of written notification of the dispute, the parties shall submit to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



EXHIBIT A
SCOPE OF WORK, SCHEDULE AND COMPENSATION

Section 1: Scope of Work

Presented below is a detailed description of the professional services to be provided by the CONSULTANT to complete the project. More specifically, this work shall include:

Project Overview:

SMA will provide Construction Drawing Design services for the Town of Mesilla Commemorative Park Improvements Project to be located on a +/- 1.92-acre parcel near the north corner of Avenida de Mesilla and University Avenue in Mesilla, NM. This will include the preparation of a complete set of civil engineering Construction Drawings including general notes, horizontal control plan, grading plan, detail callout plan, Utility Plan, Project Details, Striping and Signage Plan and Erosion Control Plan in accordance with the most current version of the Town of Mesilla Design Standards. The scope of work includes site design for the area immediately adjacent to the anticipated monument wall, the area immediately adjacent to the anticipated splash pad and the existing gravel parking lot, the remainder of the park will remain in its current state. Also included are topographic and boundary survey services as well as architectural design of the monument wall. The scope of Civil Design Services as presented herein includes the anticipated regrading of the existing dirt parking lot as well as the grading of the area around the anticipated splash pad and grading of the area around the anticipated monument wall. Splash pad design is a specialty service and shall be completed by others. SMA, if directed, can subcontract the design of the splash pad and add the fee and scope for those services as an amendment to this contract.

P3T01 Boundary/Topographic Survey

SMA will be utilizing drone surveying to conduct a field survey of the property for design. SMA survey will complete the following:

1. SMA will prepare a topographic survey to the limits as shown on Exhibit A. We will collect topography on a 50 foot grid by using GPS Trimble Model R12. We will collect the hardscape along the two entrances of the parking lot that bounds Avenida De Mesilla.
2. SMA will submit a New Mexico 811 locate request and field locate all utility marks provided.
3. SMA will superimpose record boundary information for the Town of Mesilla Parcel 4006137358522 with the June 15, 1987, Mesilla Farms Subdivision Plat, using the record bearings, distances and the found monuments. No setting of monuments is contemplated. We will produce an Autodesk Civil 3D LandXML surface file, and planimetric file. Included with the topographic survey deliverables will be a signed control sheet detailing all control set at each property in accordance with 12.8.2.14 NMAC.

This scope of work only includes processing and creation of the project site topographic and boundary survey in digital format for use in design drawing completion. This scope and fee does not include the preparation of a standalone topographic survey file either digital or in PDF format.

P1T21 Project Administration and Coordination Meetings

SMA will attend the following meetings with the CLIENT and the project team:

- Design Team Meetings – Meetings at regular intervals to discuss project specifics, scope, etc. It is anticipated there will be **three** meetings in total.
- QA/QC Review Meeting – A review meeting per work package submittal at approximately 90% plan set.



Meetings (remote or in person) with CLIENT and Town of Mesilla will be held to discuss development requirements. This will include meetings to discuss design parameters. Additional coordination meetings will take place upon submittal and review of the construction plans.

SMA Project Administration items including invoicing, scheduling, budget tracking, etc. are also included in this task.

P3T70 Site Plan Coordination

SMA will coordinate the site plan with the Town of Mesilla. The initial site plan may require modification based on information obtained during design preparation, drainage Plan, county specifications and/or additional information from Town of Mesilla. This task also includes any revisions to design drawings needed as a result of site plan revisions.

P4T70a 50% Civil Construction Drawings (CD)

Following final acceptance of the site layout provided by the client, a set of project-related Civil Construction Drawings that include engineering design services through 50% CD (or 100% DD) completion shall be prepared for the project. All project Civil Construction Drawings will be directed and overseen by SMA's New Mexico-registered professional engineer. The plans will be prepared in SMA's standard format for civil construction projects and will meet all county requirements. 50% Civil Construction Drawings provided by SMA will be limited in nature and shall include a total of one (1) Submittal. Civil design drawings will include grading of the dirt parking lot, grading of the park area around the anticipated splash pad and utility design up to 5' from the splash pad. Splash pad design, including utilities for the splash pad, shall be designed by a service provider specializing in splash pad design. The submittal shall be limited to the following information:

- 50% CD Submittal
 - General Notes
 - Preliminary Site Plan
 - Preliminary Site Grading Plan - To provide existing grade contours and initial finished floor elevations and critical spot elevations for site tie-ins. Determine the need for any site grading features including either retaining walls or yard walls. Provide general location of site ponding,
 - Preliminary Site Utility Service Plan to within 5' of building foundation system to include potable water, wastewater and natural gas - To identify existing and new utility locations and to determine meter locations as required for domestic utilities and landscaping. All sizing information and final appurtenances shall be provided later during Construction Drawing design phases,
 - Preliminary Details Sheets - To include pavement sections, curb sections, sidewalk sections, utility connection details and other site details as applicable.

Following completion of the 50% CD submittal, the design documents shall be submitted to the Client for review and comment. SMA will then meet with the CLIENT and Owner to review plans as required. ***This task does not include the completion of the design of the anticipated splash pad. Splash pad design is a specialty service and shall be completed by others. SMA, if directed, can subcontract the design of the splash pad and add the fee and scope for those services as an amendment to this contract.***



P2T04 Final Drainage Analysis

Following acceptance of the 50% CD drawings, SMA will prepare a drainage sheet of the project site in accordance with Town of Mesilla Standards. The analysis will be prepared in SMA's standard format for commercial/industrial site development, sealed by the SMA Project Engineer and meeting the requirements of jurisdictional governmental entities. This analysis will then be submitted to Town of Mesilla/City of Las Cruces for review. This analysis shall include design of pavement to carry anticipated flows, storm drains, channels, and ponds, as applicable. On-site ponding areas shall be designed to contain the difference between the pre and post development flows as well as controlling project discharge rates to that of the pre-development condition. Detention Pond(s) (if required) will be designed to discharge within 24 hours. Should a more detailed drainage study be required, it shall be provided under a separate proposal.

P4T70c 100% Civil Construction Drawings (CD)

Following acceptance of the 50% CD drawings, a set of project-related Construction Drawing documents that include engineering design services through CD completion shall be prepared for the project. All project Construction Drawing documents will be directed and overseen by SMA's New Mexico-registered professional engineer. The plans will be prepared in SMA's standard format for civil construction projects and will meet all jurisdictional requirements. Civil design drawings will include grading of the dirt parking lot, grading of the park area around the anticipated splash pad and utility design up to 5' from the splash pad. Splash pad design, including utilities for the splash pad, shall be designed by a service provider specializing in splash pad design. This submittal shall include the following information:

- 100% Submittal
 - General Notes/Index Sheet,
 - Site Plan,
 - Site Horizontal Control Plan,
 - Site Grading Plan,
 - Site Utility Service Plan to within 5' of building foundation system to include potable water, wastewater and natural gas,
 - Striping and Signage Plan,
 - Site Erosion Control Plan,
 - Detail Call Out Plan,
 - Details Sheets - To include pavement sections, curb sections, sidewalk sections, drainage/ponding feature details, utility connection details and other site details as applicable.

Following completion of each CD submittal, the design documents shall be submitted to the Client for review and comment. SMA will then meet with Client and Owner to review design plans as required. Following final approval of the 100% CD drawings, the plans will be sealed by the SMA Project Engineer meeting the requirements of the Town of Mesilla and/or City of Las Cruces. ***This task does not include the completion of the design of the anticipated splash pad. Splash pad design is a specialty service and shall be completed by others. SMA, if directed, can subcontract the design of the splash pad and add the fee and scope for those services as an amendment to this contract.***



P4T70d Monument Wall Architectural Design

SMA, via its subconsultants, will coordinate the design of the anticipated monument wall. The monument wall is anticipated to be similar in concept to the memorial walls at Veterans Park located in Las Cruces, NM with a total anticipated wall size of 8' x 150'. The monument wall will visually match the existing monument structure and will match the historic nature of the Town of Mesilla.

SMA's subconsultants will provide the services necessary to complete the work described below:

- Develop initial design concepts and preliminary layouts. Provide 2D and 3D representations to convey the design intent. Engage with the client review, refine and align the design based on Client feedback.
- Advance the approved schematic design into a more detailed and coordinated design, integrating architectural, structural, and electrical systems.
- Prepare comprehensive drawings and specifications required for bidding, permitting, and construction. Coordinate with engineering consultants to ensure consistency and completeness across all disciplines. Finalize documents suitable for contractor pricing and regulatory approval.

P4T70e Splash Pad Design

SMA, via its subconsultants, will coordinate the design of the anticipated splash pad. After receiving information regarding the desired splash pad location, size and budget from the client, SMA will coordinate a concept plan of the splash pad with its subconsultant. The splash pad design will be limited in nature and will only provide a plan view schematic layout for bid purposes only. Final splash pad design drawings to be used for construction will be developed at a later date under an Amendment to this contract.

Please note, the splash pad design task as described above is limited in nature and will only serve to provide a plan view schematic design of the splash pad. Finalized construction drawings of the splash pad will require additional scope and fee as an official Amendment to this proposal.

WORK NOT INCLUDED

The above scope of services constitutes our entire proposal. Items specifically excluded are:

1. **Any work not specifically outlined and included in the above task summaries.**
2. Underground exploration of any kind (beyond any geotechnical services described above, if any),
3. Additional bores and testing in excess of number listed above,
4. Identification, location and/or verification of hazardous or toxic waste sites, archeological sites, or environmentally sensitive sites,
5. Redesign following approval of 50% review drawings,
6. Biological Survey, Cultural Resources Survey and /or an Environmental Assessment,
7. Resolution of any differences discovered between field and record data,
8. Payment of permit or recording fees, title research, exemption, express mailing, and/or other fees,
9. Drainage Report
10. Storm Water Pollution Prevention Plan.
11. Variance Requests.
12. Landscape Design.
13. Traffic Engineering Studies.



- 14. Geotechnical Investigation/Report Services.
- 15. Final Splash Pad Design.

Section 2: Schedule and Term

SMA will work with the Client to establish a mutually agreeable project schedule for each task identified above. The Client or Client’s representative shall submit the final drawings to Town of Mesilla and/or City of Las Cruces for review and approval.

Section 3: Compensation

Compensation for the professional services identified in Section 1 of this Exhibit A shall be made as follows.

Estimated Budget for Civil Engineering and Surveying Services		
Site Design Phase – Base Contract		
Task #	Description	Total
P3T01	Boundary/Topographic Survey	\$5,000.00
P1T21	Project Administration and Coordination Meetings	\$2,795.00
P3T70	Site Plan Coordination	\$4,980.00
P4T70a	50% Civil Construction Drawings (CD)	\$8,860.00
P2T04	Final Drainage Analysis	\$3,460.00
P4T70c	100% Civil Construction Drawings (CD)	\$4,500.00
P4T70d	Monument Wall Architectural Design	\$13,600.00
P4T70e	Splash Pad Design	\$4,260.00
Total Base Contract for Civil Engineering and Surveying Services		\$ 47,455.00

Please note that the fees do not include New Mexico Gross Receipt Taxes (NMGRT). Project required permitting, application fees and direct reimbursable items as listed within the “Reimbursable Expense Schedule”, Attachment Number 1, Exhibit A, Page 2 attached herein, are also not included. These fees, as applicable, will be added to all invoices.

A copy of SMA’s 2025 rates, fees, and expenses are enclosed with this proposal. Additional services requested by the client beyond the scope of services identified in the Professional Service Agreement will be provided as a separate Work Order, including a specific scope of work and fee, plus applicable gross receipts tax and is not included as part of the base fee stated above.

Section 4: Sub-consultants

SMA proposes to complete the work identified in Section 1 of this Exhibit A using the following sub-consultants. The Client approves of the use of the following sub-consultants:

- ***Desert Peak Architects – Monument Wall***
- ***Exerplay – Splash Pad Schematic Design***



Section 5: Supplementary Information

EXHIBIT A – Survey Limits



SOUDER, MILLER & ASSOCIATES
PROFESSIONAL FEE SCHEDULE - EFFECTIVE January 2025

PROFESSIONAL SERVICES

Professional Staff

Principal	\$265.00 per hour	Staff VIII	\$250.00 per hour
Senior Manager III	\$250.00 per hour	Staff VII	\$220.00 per hour
Senior Manager II	\$235.00 per hour	Staff VI	\$195.00 per hour
Senior Manager I	\$220.00 per hour	Staff V	\$175.00 per hour
Senior III	\$205.00 per hour	Staff IV	\$155.00 per hour
Senior II	\$195.00 per hour	Staff III	\$145.00 per hour
Senior I	\$185.00 per hour	Staff II	\$135.00 per hour
Project III	\$175.00 per hour	Staff I	\$125.00 per hour
Project II	\$165.00 per hour		
Project I	\$155.00 per hour		

Technical Staff

Tech VIII	\$190.00 per hour
Tech VII	\$170.00 per hour
Tech VI	\$155.00 per hour
Tech V	\$140.00 per hour
Tech IV	\$125.00 per hour
Tech III	\$110.00 per hour
Tech II	\$95.00 per hour
Tech I	\$85.00 per hour
Technical Intern II	\$65.00 per hour
Technical Intern I	\$50.00 per hour
Construction Observer IV	\$130.00 per hour
Construction Observer III	\$110.00 per hour
Construction Observer II	\$90.00 per hour
Construction Observer I	\$75.00 per hour

Support Staff

Project Financial/Manager Assistant II	\$110.00 per hour
Project Financial/Manager Assistant I	\$85.00 per hour
Administrative Assistant IV	\$140.00 per hour
Administrative Assistant III	\$120.00 per hour
Administrative Assistant II	\$100.00 per hour
Administrative Assistant I	\$85.00 per hour

EXPENSES

All project-related expenses will be billed at rates determined with respect to current market pricing; *a complete list of expense rates is available upon request.*

OTHER SERVICES

- Telephone/facsimile/postage @ actual cost
- Mileage @ \$0.70 per mile (or current IRS rate)
- Per diem \$220.00 per day (or max per-diem rate per USGSA)
- Other travel (car rental, air, etc.) @ actual cost

SUBCONTRACTED SERVICES

Subconsultants, analytical laboratories, drilling services & general subcontractors @ cost+10%

Applicable tax applies to all billable hours, expenses and other charges for which such tax has not previously been paid. Overtime will be charged at a rate of 1.5x on time & materials tasks with prior written acknowledgement of the client for services in excess of 8 hours in a day, on weekends or holidays.





Executive Summary

To: Board of Trustees

From: Russell Hernandez, Mayor
Mynatt Springer, Legal Team

Date: For Regular Meeting 12/08/2025

Re: Discussion: Wireless Telecommunications Ordinance

Summary of items to be considered

The Board is asked to:

- Discuss the proposed ordinance with legal counsel;
- Identify areas requiring clarification, modification, or further research;
- Direct the legal team to prepare a formal markup or rewritten draft incorporating Board feedback (they will have a discussion review of the updated draft as well).

Items for Board Consideration

1. Overview of Legal Team’s Initial Assessment

- Identification of potential conflicts with federal laws (Telecommunications Act, FCC regulations, Shot Clock rules).
- Evaluation of whether ordinance requirements could be considered “materially inhibiting” or “effectively prohibiting” wireless service.
- Assessment of exposure to litigation based on current language.

2. Structural and Procedural Consistency

- Feedback on the ordinance’s overall structure, internal consistency, and clarity.
- Review of redundancy, contradictions, and overlapping definitions.
- Recommendations for reorganizing or consolidating sections for improved legal defensibility.

3. Local Authority vs. Federal Preemption

- Determination of which provisions exceed the Town’s regulatory authority (e.g., RF emissions, coverage determinations, NEPA/NHPA requirements).
- Identification of areas where the ordinance may need to be revised to comply with preemption standards.

4. Aesthetic, Height, and Setback Standards

- Confirmation that aesthetic restrictions meet FCC requirements for being: **(1)** reasonable, **(2)** objective, and **(3)** no more burdensome than for other infrastructure.
- Evaluation of height restrictions, setback requirements, and residential buffers for possible prohibitory effects.

5. Application Process & Shot Clock Compliance

- Review of completeness check procedures and timing.
- Identification of any conflicts between local timelines and FCC shot clock regulations.
- Guidance on how to structure procedural steps to avoid inadvertent violations.

6. Enforcement, Monitoring, and Post-Approval Requirements

- Legality and enforceability of proposed monitoring or testing provisions.
- Review of permit revocation, compliance certification, and reporting requirements.
- Identification of areas that may expose the Town to legal challenge.

7. Recommendations for Next Steps

- Legal team's priority areas for revision.
- Recommended process for Board review, drafting, public engagement, and adoption timeline.

Financial Impact:

- n/a

Supporting Documentation:

- See Attached

Town of Mesilla
Amended Ordinance Draft April 23, 2025
Trustee Nevarez
Chapter 18.54
WIRELESS TELECOMMUNICATIONS FACILITIES

LEGEND: **Black** – existing Town of Mesilla ordinance (about 20 years old)
 Red - existing Town of Mesilla ordinance edits by committee
 Green – PZHAC edits
 Blue – new copy adapted from Langley Washington (2021-23)

Sections:

18.54.010	Authority and purpose.
18.54.020	Definitions.
18.54.030	Applicability and exemptions.
18.54.040	General standards and construction provisions.
18.54.050	Co-location.
18.54.060	Heights, placement provisions and setbacks.
18.54.070	Special use permits.
18.54.080	Buildings or other equipment storage.
18.54.090	Application review and inspection fee.
18.54.100	Performance security bond.
18.54.110	Liability insurance.
18.54.120	Indemnification.
18.54.130	Removal of a wireless telecommunications facility.
18.54.140	Required annual report.
18.54.150	Provision for waiver or variance.
18.54.160	Penalty.
18.54.170	Default and/or revocation.
18.54.180	Eleventh hour submissions.
18.54.190	Prohibition against illegally excessive emissions and Radio Frequency (RF) radiation testing.
18.54.200	Factual determinations to be rendered by the Town of Mesilla.
18.54.210	General Provisions.
18.54.220	Shot Clock Periods.
18.54.230	Shot Clock tolls, extensions and reasonable delay periods.

18.54.010 Authority and Purpose.

This chapter is intended to repeal and replace all previous versions of, and amendments to, Chapter 18.54, Wireless Telecommunications Facilities, of the Municipal Code of the Town of

Mesilla (“Municipal Code”), all of which is hereby repealed and replaced in its entirety by this chapter et seq., as of the effective date of the ordinance codified in this chapter.

No Personal Wireless Service Facility (PWSF) shall be sited, constructed, reconstructed, installed, materially changed or altered, expanded, or used unless in conformity with this chapter.

For the installation, construction, erection, relocation, substantial expansion, or material alteration of any PWSF, the town shall require a special use permit pursuant to the provisions of this section, which shall be applied for in accord with the procedure set forth within Chapter 18.85 - Variances and special use permit, unless otherwise provided herein.

The performance of maintenance, routine maintenance, in-kind replacement of components, and/or repairs (as defined herein) to an existing PWSF and/or existing personal wireless service equipment shall not require a special use permit.

Each application for a special use permit under this chapter and each individual PWSF for which an application for a special use permit is submitted shall be considered based upon the individual characteristics of each respective installation at each proposed location as an individual case. In other words, each installation, at each proposed location, shall be reviewed and considered independently for its own characteristics and potential impacts, irrespective of whether the proposed facility is designed and intended to operate independently or whether the installation is designed and/or intended to operate jointly as part of a distributed antenna (DAS) system.

A. Authority. The comprehensive land use ordinance is amended pursuant to the enabling provisions of Section 3-21-1 through 3-21-14, NMSA 1978, as amended.

B. Purpose **and legislative intent**. The purpose of this chapter is to establish regulations and general guidelines for the siting of wireless telecommunications facilities (WTFs), **that promote the health, safety, and general welfare of the residents of the Town of Mesilla and to preserve the scenic, historical, natural, and manmade character and appearance of the town, while simultaneously providing standards for the safe provision, monitoring, and removal of cell towers and other PWSF consistent with applicable federal, state and local laws and regulations.**

The town seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.

The town also seeks to ensure that, in applying this chapter, the Town of Mesilla is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Town of Mesilla to render factual determinations consistent with both the provisions set forth herein below and the requirements of the Federal Telecommunications Act of 1996 (TCA) when rendering decisions upon such applications.

To achieve the objectives stated herein, the town seeks to employ the “general authority” preserved to it under 47 U.S.C. § 332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the town, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsections of 47 U.S.C. § 332(c)(7)(B) of the TCA.

C. The goals of this chapter are to:

1. Protect residential areas and land uses from potential adverse impact of WTFs;
2. Minimize the total number of towers in the community; **give preference to newest and least intrusive technologies including but not limited to small cells, fiberoptic cable, and satellites in order to retain historic character of the Town of Mesilla.**
3. **Prioritize** ~~Strongly encourage~~ the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
4. **Require** ~~Encourage~~ s of WTFs to locate them, ~~to the extent possible~~, in areas where the adverse impact on the community is minimal; **All studies are to be at the expense of the users, while the town will identify and approve all independent vendors.**
5. **Require** ~~Encourage~~ users of WTFs to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques **such as artwork; all visual improvements are to be paid for by the WTF users.**
6. Enhance the ability of providers of telecommunications services to provide such services to the community quickly, effectively and efficiently;
7. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

In furtherance of these goals and in approving sites for the location of towers and antennas, the town of Mesilla shall give due consideration to Mesilla’s master plan, its zoning map, existing land uses and environmentally and historically sensitive areas, **maintaining the town character and including resident feedback.** [Ord. 2003-10 § 1]

Consistent with the balancing of interests which the United States Congress intended to embed with the TCA, , this chapter is intended to serve as a smart planning provision, designed to achieve the four simultaneous objectives of: (1) enabling personal wireless service providers to provide adequate personal wireless services throughout the town so that town residents can enjoy the benefits of the same, from any FCC-licensed wireless carrier from which they choose to obtain such services, while (2) minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage, (3) preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the town's communities, residential areas, and individual homes, and (4) complying with all of the legal requirements which the TCA imposes upon the town, when the town receives, processes and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.

18.54.020 Definitions.

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations, shall have the meaning given in this section. The word "shall" is always mandatory and not merely directory. If, and to the extent that, the definitions set forth herein are inconsistent with any other definitions elsewhere within the Municipal Code, the definitions herein shall supersede any conflicting definitions set forth elsewhere within the Municipal Code, and the definitions set forth herein below shall control and apply to this chapter and all subsections herein.

"Accessory facility" or "accessory structure" means a facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex, or an immediately adjacent lot including, but not limited to, utility or transmission equipment storage sheds or cabinets.

"ACHP" means the federal Advisory Council on Historic Preservation.

"Adequate coverage," as determined by the Town of Mesilla in consultation with the town's consulting expert, means that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless services the vast majority of the time, in the vast majority of the geographic locations within the town, that the success rate of using their devices exceeds 97 percent (unless building materials such as adobe or metal interfere with signal reception), and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate

simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

~~B. "Antenna" means any structure that radiates or receives radio or other communication signals.~~ "Antenna" means an apparatus designed for the purpose of emitting RF radiation, to be operated or operating from a fixed location, for the provision of personal wireless services.

"Applicant" means any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a special use permit, site plan approval, variance, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless services facilities.

"Application" means all necessary and required documentation and evidence that an applicant must submit to receive a special use permit, building permit, or other approval for personal wireless services facilities from the town.

"Cell tower" means a free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support, equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, slim stick, lattice tower or other types of standing structures.

"CEQ" means the Council on Environmental Quality established under NEPA.

"CFR" means the Code of Federal Regulations.

~~C. "Co-location" means the physical attachment and/or placement of one communication structure upon another communication structure, and may include placing different or similar communication structures on the receiving structure.~~ "Colocation" and/or "co-locate" means to install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services, by a different provider of such services, wireless carrier or site developer.

"Complete application," "completed application" means an application that contains all the necessary and required information, records, evidence, reports, and/or data (including number of carrier's subscribers, and drive test maps) necessary to enable an informed decision to be made with respect to an application. Where any information is provided, pursuant to the terms of this chapter and the town planning official or the town's expert or consultant or the Town of Mesilla, determines, based upon information provided, that any additional, further or clarifying information is needed as to one or more aspects, then the application will be deemed

incomplete until that further or clarifying information is provided to the satisfaction of the town planning official, Town of Mesilla or the town's expert or consultant or the Town of Mesilla.

D. "Commercial tower" means a freestanding vertical structure that may or may not have various attachments thereto, which is intended to radiate and/or receive radio frequency signals for the purpose of providing a commercial service to the public. Commercial tower uses include, but are not limited to, cellular communications, paging stations, TV stations, AM and FM radio stations, two-way radio base stations, communication mobile service, common carrier wireless services and communications used for intra-business and inter-business purposes.

"Complex" means the entire site or facility, including all structures and equipment, located at the site.

E. "Communication structure" means any structure, including antennas and satellite service devices, or any other device which is normally used for radio, television, microwave or wireless communications. This shall include any device that is attached to a new or an existing tower, or attached to a building facade or roof or other non-communication structure, and such attachment is made to the facade or roof vertically, horizontally and/or diagonally.

DBM (dBm). DBM stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can typically range from approximately -30 dBm to -110 dBm. The closer the number is to zero, the stronger the cell signal.

"Deployment" means the placement, construction, or substantial modification of a personal wireless services facility.

"Distributed antenna system (DAS)" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

"Effective prohibition" means a finding by the Planning, Zoning, and Historical Appropriateness Commission (PZHAC) that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the PZHAC deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the town and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the town. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the

least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.

“Eleventh hour submissions” means an applicant’s submission of new and/or additional materials in support of an application within 72 hours of the expiration of an applicable shot clock (as is hereinafter defined), or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Town of Mesilla to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

“EIA” means the Environmental Improvement Act.

“Enure” means to serve to the use, benefit, or advantage of a person or party.

“EPA” means the United States Environmental Protection Agency.

“FAA” means the Federal Aviation Administration, or its duly designated and authorized successor agency.

“Facial mount” means the physical attachment of a communication structure to a building or other noncommunication structure, which does not substantially increase the height of the building or structure. This can include attaching the structure either vertically, horizontally, or diagonally along the structure’s building facade, facades, walls, roofs or other structures.

“Facility” means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

“FCC” means the Federal Communications Commission.

“General population/uncontrolled exposure limits” means the applicable radiofrequency radiation exposure limits set forth within [47 CFR 1.1310\(e\)\(1\)](#), Table 1, Section (ii), made applicable pursuant to [47 CFR 1.1310\(e\)\(3\)](#).

~~G. “Height,” when referring to a tower or other structure, means the distance measured from the lowest adjacent ground level of the parcel of land vertically to the highest point on the tower or other structure, including the base pad and any antenna and whether attached to the ground, the building, or other structure(s).~~ “Height” means, when referring to a tower, personal wireless service facility, or personal wireless service facility structure, the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-

on, antenna, whip antenna, lightning rod or other types of lightning protection devices attached to the top of the structure.

“Historic structure” means any structure that would meet the definition of a regulated structure as defined in this chapter.

~~H. Historic Resources or Zones.~~ For the purposes of this chapter, a ~~resource or district~~ **zone** is considered historic if it is listed individually or collectively or eligible to be listed in the National Historic Landmark Register, the National Register of Historic Places or the State Register of Cultural Properties or if the resource or ~~district~~ **zone** has been identified by a governmental agency, such as the New Mexico Historic Preservation Division, as having significant value as an historic, cultural or archaeological resource.

“Illegally excessive RF radiation” or “illegally excessive radiation” means RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR 1.1310(e)(1), Table 1, Sections (i) and (ii), as made applicable pursuant to 47 CFR 1.1310(e)(3).

“In-kind replacement” means the replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

“Macrocell” means a cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, which typically range from 50 to 199 feet in height.

“Maintenance” or “routine maintenance” means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates: reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

“Municipal code” means the town of Mesilla Municipal Code.

“Necessary” or “necessity” or “need” means what is technologically required for the equipment to function as designed by the manufacturer, and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a need or a necessity.

“NEPA” means the National Environmental Policy Act, [42 U.S.C. § 4321](#) et seq.

“NHPA” means the National Historic Preservation Act, [54 U.S.C. § 300101](#) et seq, and [36 CFR Part 800](#) et seq.

“Node,” “DAS node” means a fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

“Notice address” means an address, which is required to be provided by an applicant at the time it submits an application for a special use permit, at which the town, Town of Mesilla and/or town planning official can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this chapter, as well as any notice requirements of any other local, state and/or federal law.

“Notice of effective prohibition conditions” means a written notice which is required to be provided to the town at the time of the filing of any application, by all applicants seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, Town of Mesilla or body of the town, would constitute an “effective prohibition” within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate [47 U.S.C. § 332\(c\)\(7\)\(B\)\(i\)\(II\)](#) of the TCA.

“Notice of incompleteness,” “notice of incomplete application” means a written notice, mailed by first class mail, to an applicant seeking an approval for the installation of a PWEF, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting forth the reason or reasons why the application is incomplete and/or defective.

“Occupational/controlled exposure limits” means the applicable RF radiation exposure limits set forth within [47 CFR 1.1310\(e\)\(1\)](#), Table 1, Section (i), made applicable pursuant to [47 CFR 1.1310\(e\)\(2\)](#).

“Personal wireless service/personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of [47 U.S.C. § 332\(c\)\(7\)\(c\)\(i\)](#), and as defined therein.

I. ~~“Personal (private) tower” means a freestanding vertical structure that may or may not have various attachments thereto, which is intended to radiate and/or receive RF signals for the purpose of radio communications without the intent of commercial service. Personal tower uses include, but are not limited to, television signal reception, amateur radio stations, AM and FM radio signal reception and citizen band (CB) base stations. Personal (private) towers are excluded from the C, H-C and H-R zones.~~

"Personal tower" and "personal wireless service facility" are not the same. A "personal wireless service facility" (PWSF) is a broader term that refers to any facility used for transmitting or receiving personal wireless services, as defined by the Telecommunications Act of 1996. This includes things like cell phone towers, microwave towers, and other structures used for wireless communication. "Personal tower" is a more specific term that might refer to a tower used for personal use, such as a private wind tower or a solar panel installation. The key difference is that PWSFs are part of a broader telecommunications infrastructure, while "personal tower" might be a more localized or individual use.

“Personal wireless service facility,” “personal wireless services facility” or “PWSF” means a facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. § 332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services. Personal (private) towers are ~~excluded~~ **prohibited** from the C, H-C and H-R zones.

“Probative evidence” means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the PZHAC, as the finder-of-fact in determining whether to grant or deny applications for special use permits under this provision of the Municipal Code.

⌚ “PZHAC” means the planning, zoning and historical appropriateness commission, the body that shall review applications for WTFs and recommend action to the board of trustees, which is the governing body of the town of Mesilla.

“Repairs” means the replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

“RF” means radio frequency.

“RF radiation” means radio frequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both non-ionizing radiation and ionizing radiation.

✕ “Satellite service device (SSD)” means any structure used to receive satellite programming services specifically associated with television reception from the transmission of signals from a satellite to a receiver, usually a round “dish” that can vary in size from 18 inches to 10 feet in diameter.

“Section 106 review” means a review under Section 106 of the National Historic Preservation Act.

“Setback” means for purposes of special use permit applications, a setback shall mean the distance between (1) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (2) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a special use permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property which is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

“Shot clock” means the applicable period which is presumed to be a reasonable period within which the town is generally required to issue a final decision upon an application seeking special use permit approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with 47 U.S.C. § 332(c)(7)(B)(ii) of the TCA.

“Site developer” or “site developers” means individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or town upon, or use of, their facilities and/or infrastructure to wireless carriers. Unlike wireless carriers, site developers generally do not provide personal wireless services to end-use consumers.

“Small cell” means a fixed cellular base station that typically sends and receives radio signals and which are mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

“Small wireless facility (SWF)” means a personal wireless service facility that meets all of the following criteria:

1. The facility does not extend the height of an existing structure to a total cumulative height of more than 50 feet, from ground level to the top of the structure and any equipment affixed thereto;
2. Each antenna associated with the deployment is no more than three cubic feet in volume;
3. All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than 28 cubic feet in volume;
4. The facility is not located in historic zones or on tribal land; and
5. The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR 1.1310(E)(1).

“Special use permit” means the official document or permit granted by the Town of Mesilla pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

“State” means the state of New Mexico.

~~A. “Alternative tower structure” means such structures as manmade trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.~~

“Stealth” or “stealth technology” means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. This shall mean building the least visually and physically intrusive facility and complex under the facts and circumstances.

“Structure” means a pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

“Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

“TCA” means the Telecommunications Act of 1996, [47 U.S.C. § 332\(c\)](#).

~~L~~ “~~Tower~~, **Telecommunications tower**” means any structure, vertical in inclination, that is designed and constructed and normally used for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. This may include television and radio transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and other freestanding towers, either for private or commercial purposes. The term includes the structure and any support thereto.

“Tolling” or “tolled” means the pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to resume running, as opposed to causing the shot clock to begin running anew.

“Town” means the Town of Mesilla.

“Undertaking” means any application for a special use permit seeking Town of Mesilla approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with [42 CFR 137.289](#) and [36 CFR 800.16](#).

“Users” means “wireless carriers” or “carrier” companies that provide personal wireless services to end-use consumers.

~~M~~ “Vertical structure” means any built object that is either independent of or attached to any building or other structure that is perpendicular in its direction to the nearest adjacent ground, including but not limited to flag poles, belfries, chimneys and parapet walls.

~~N~~ “View corridors” are defined as an area identified either in the Mesilla comprehensive plan or by a federal or state agency as the location of a particular designated scenic or cultural resource or trail system and as an area from which a WTF can be seen. **View corridors are to**

include but are not limited to the Butterfield Trail, view of the Organ Mountains – Desert Peaks National Monument, Picacho Peak. The view corridors are established by the Board of Trustees of the Town of Mesilla as per resolution.

☒ “Wireless telecommunications facility (WTF)” includes all equipment, buildings and structures with which a wireless communications service carrier broadcasts and receives the RF waves and all locations of said equipment or any part thereof. [Ord. 2003-10 § 2]

“Wireless carriers” or “carrier” means companies that provide personal wireless services to end-use consumers.

“Zoning appeals” means appeals made to the Town of Mesilla.

18.54.030 Applicability and exemptions.

A. 1. New Towers and Antennas. All new towers or antennas in the town of Mesilla shall be subject to these regulations, except as provided in subsections (B) and (C) of this section.

2. Amateur Radio Station Operators/Receive Only Antennas. The sections that follow shall not govern television antennas, satellite dishes and receive only antennas; provided, that the primary use of the property is not a wireless telecommunications facility (WTF) and that the antenna use is accessory to the primary use of the property. Nor shall the sections that follow govern any freestanding vertical structure or the installation of any freestanding vertical structure located in the R-1 zone that is under 30 feet in height or located in the RA zone that is under 40 feet in height or located in the RF zone that is under 50 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive only antennas.

B. Pre-existing Towers or Antennas. Pre-existing towers and pre-existing antennas for which a building permit has been properly issued prior to the effective date of the ordinance codified in this chapter shall not be required to meet the requirements of this chapter, other than the requirements of MTC 18.54.040(G) and (H).

C. Public property owned or otherwise controlled by the town of Mesilla shall not ~~may~~ be exempt from the requirements of this chapter.

D. Towers and antennas shall be regulated and permitted pursuant to this chapter and shall not be regulated or permitted as essential services, public utilities, or private utilities. [Ord. 2003-10 § 3]

18.54.040 General standards and construction provisions.

A. Height. All structure heights shall be measured from the lowest adjacent ground level vertically to the highest point of all structures, whether attached to the ground, the building or other structure(s). The principal supporting structure for WTFs shall be permitted to exceed the height limit of the zoning district in which it is located; provided, that the setback standards in MTC 18.54.060 shall apply.

B. Lot Size. For the purposes of determining whether the installation of a tower or antenna complies with zoning development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the WTF may be located on leased parcels within such lot.

C. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in Mesilla irrespective of municipal and county jurisdictional boundaries.

D. Public Notice & Hearings. For purposes of this chapter, a special use permit request, a variance request or an appeal of a special use permit or variance shall require public notice in a local publication of record which is Las Cruces Bulletin. In the event, Las Cruces Bulletin is not available, public notice will be ran in any other local general circulation within the town of Mesilla and all public notification locations. Each “notice of public hearing for new wireless facility” shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a special use permit, and the date, time, and location of the hearing. In order that the town may notify nearby landowners, the application shall contain the names and address of all property owners of properties that are located within 1,500 feet of any property line of the lot or parcel on which the WTF is proposed to be located. This requirement is in addition to any and all notice requirements contained in the town’s zoning ordinance.

Required Public Notices. The Town of Mesilla shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 18 point, the words:

NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY

The applicant shall additionally post a notice upon the proposed site advising the public of the public hearing.

Prior to the date of the hearing, the respective applicant shall file an affidavit of mailing, attesting to whom such notices were mailed by the applicant, and the content of the notices which were mailed to such recipients.

Hearings and public notice.

A. Public Hearings. The Town of Mesilla shall conduct a public hearing upon each special use permit application, consistent with the procedures in Section 18.36.060, except the Town of Mesilla shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the town and the Town of Mesilla under the requirements of the TCA.

Before the date scheduled for the public hearing, the Town of Mesilla shall cause to be published a “notice of public hearing for new wireless facility.”

~~B.-E.~~ Minimum Wind Speed. All structures shall be constructed and installed to manufacture’s specification and constructed to withstand a minimum 90-mile-per-hour wind, or the minimum wind speed as required by the town’s adopted Uniform Building Code, as amended, whichever wind speed is greater.

~~C. F.~~ Building Codes. Structures shall be permitted and constructed to meet current town of Mesilla building code requirements, including the Uniform Building Code, and required setback provisions as prescribed for the zoning districts in which such structures are permitted. If any setback or buffer yard as prescribed in the town’s zoning code requires a greater distance than required in this chapter, the greater setback shall apply.

~~D. G.~~ Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that the tower is maintained in compliance with the standards contained in applicable federal, state and town building codes. If, upon inspection, the town of Mesilla concludes that a tower fails to comply with such codes and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to do so shall constitute grounds for the removal of the tower or antenna at the owner’s expense.

~~E. H.~~ State or Federal Requirements. All towers shall meet or exceed current standards and regulations of the Federal Communication Commission (FCC), the Federal Aviation Administration (FAA) and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of the revisions, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with

such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

F. ~~F.~~ Business Registration Required. Business registrations are required for each WTF for commercial purposes located within the town limits of Mesilla, regardless of whether said structure is freestanding, co-located, facial or roof mounted, or part of an integrated structure or improvement. Business registrations are renewable annually.

G. ~~G.~~ Inventory of Existing Sites. Each applicant for a WTF shall provide to the PZHAC an inventory of existing towers, antennas or sites approved for towers or antennas that are located within the service area proposed to be served by the new tower, including specific information about the location, height and design, and the owners/operators of each tower or site and indicate the distance of such towers, antennas or sites from the proposed WTF.

H. ~~H.~~ Aesthetics. Towers and antennas shall meet the following aesthetic requirements:

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

2. The design of the buildings and related structures at a WTF site shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and any surrounding buildings.

3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

I. ~~I.~~ Lighting. Only security lighting not to exceed 12 feet in height or lighting required by a state and/or federal agency is allowed, providing the location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises.

J. ~~J.~~ Signs. No signs shall be allowed on an antenna or tower other than signage required by the FCC or other regulatory agency and signs that warn of safety hazards or prohibit access; provided, that such signs are no larger than one square foot and are reviewed by town staff and approved by the board of trustees.

K. ~~K.~~ Building and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply fully with the town's building codes.

L. ~~Q.~~ Health Issues. Every wireless telecommunications facility shall meet health and safety standards for electromagnetic field emissions as established by the Federal Communications Commission or any successor thereof, and any other federal or state agency.

M-~~P.~~ View Corridors. No wireless communication tower or facility is allowed within ~~660~~ 1320 feet (or one-eighth ~~quarter of a~~ mile) of the outer edge of the right-of-way of any designated view corridor, ~~to include but not limited to the Butterfield Trail, view of the Organ Mountains – Desert Peaks National Monument.~~ The view corridors are established by the Board of Trustees of the Town of Mesilla as per resolution.

N. ~~Q.~~ Historic Preservation Review. No WTF that may affect archaeological, historic or cultural properties that are listed or are eligible for listing on the National Register of Historic Places shall be constructed, installed or modified without first obtaining Historic Preservation Division 106 Review as per 36 CFR part 800 in accordance with the National Historic Preservation Act of 1966, as amended. A project comment review letter from the State of New Mexico Historic Preservation Division, Office of Cultural Affairs shall be filed with the town at the time of filing a business registration application and/or special use permit application.

O. ~~R.~~ Visual Models. Visual models shall be required of all applicants for a WTF as follows:

1. Photographic Simulation. The applicant shall be required to provide a photographic simulation with the image of a tower or other proposed communications structure and all structures associated with the site superimposed over the existing view to provide a sense of the visual impact expected from the proposed WTF.

2. Site-Located Height Model ~~or Balloon Test~~. A height model, which shall be a pole or other object erected or floated at the site to the requested height of the proposed WTF, may be required as a condition of the special use permit. If required, the following conditions shall apply:

a. The applicant shall submit photographs of the height model ~~or balloon test~~ from neighboring residential areas and public roadways and other locations around the town as specified by the PZHAC within three miles from which the height model ~~or balloon~~ is visible. The height model ~~or balloon~~ shall be a minimum of three feet in diameter.

b. Photographs of the height model ~~or balloon test~~ shall be submitted no less than 10 days prior to the scheduled public hearing date for the special use permit.

c. Height models ~~or balloon tests~~ shall be erected for a minimum of three days no less than 15 days prior to the scheduled public hearing date for the special use permits. The legal notice for the special use permit shall state the dates and location during which the height model ~~or balloon test~~ will be erected.

d. The PZHAC may waive this requirement if it is determined that the photographic simulation is adequate to address any and all visual impact issues.

e. Town staff shall issue administratively any permit necessary for a temporary height model required for staff and public inspection purposes.

~~O. S.~~ All utilities at a WTF site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the town of Mesilla, the National Electrical Safety Code and the National Electrical Code where appropriate.

~~P. T.~~ All applicants for a WTF or any modification to an existing WTF should develop their plans to allow reasonable requests from the town to use space on its towers and space within the existing or planned compound for deploying and operating public service radio facilities at no cost to the town. Provisions for adequate advance notice regarding town access to the WTF for routine activities will be arranged with the applicant. [Ord. 2003-10 § 4]

The following design standards shall apply to all applications for the siting, construction, maintenance, use, erection, movement, reconstruction, expansion, material change, or structural alteration of a personal wireless service facility:

Q. Small Wireless Facilities. Small wireless facilities (SWF) shall be sited to inflict the minimum adverse impacts upon individual residential properties, and specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same.

SWFs attached to pre-existing wooden and nonwooden poles shall conform to the following criteria:

1. Proposed antenna and related equipment shall meet:

a. Design standards which the town may maintain and update as needed; provided, that the town makes its design standards publicly available for review by any potential applicant seeking approval for the installation of an SWF within the town; and

b. National Electric Safety Code (NESC) standards; and

c. National Electrical Code (NEC) standards.

2. Antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which are

mounted on poles, shall be mounted as close to the pole as technically feasible. They shall not be illuminated except as required by municipal, federal, or state authority, provided this shall not preclude deployment on a new or replacement street light.

3. Antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible. Conduits and cabinets shall cover all cables and wiring to the extent that it is technically feasible if allowed by the pole owner. The number of conduits shall be minimized to the extent technically feasible. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduits shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached.

SWFs attached to replacement poles and new poles shall conform to the criteria set forth herein above for SWFs attached to pre-existing wooden and nonwooden poles, but shall additionally conform to the following criteria:

- a. The town prefers that wireless providers and site developers install SWFs on existing or replacement poles instead of installing new poles, and accordingly, to obtain approval for the installation of a new pole, the provider shall be required to document that installation on an existing or replacement pole is not technically feasible.
- b. To the extent technically feasible, all replacement poles and new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of the pole being replaced, or in the case of a new pole, it shall conform to the nearest adjacent pole or poles.
- c. The height of replacement poles and new poles shall conform with the height limitations applicable to the zone within which the applicant seeks to install their proposed SWF unless the applicant obtains a variance to obtain relief from any such limitation(s).

R. Telecommunications Towers and Personal Wireless Service Facilities Which Do Not Meet the Definition of a Small Wireless Facility. The design of a proposed new telecommunications tower or personal wireless service facility shall comply with the following:

1. The choice of design for installing a new personal wireless service facility or the substantial modification of an existing personal wireless service facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties.

2. Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers.

3. Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.

4. Notwithstanding the height restrictions listed elsewhere in this chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation.

5. Accessory Structures.

a. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage communications towers may be required by the Town of Mesilla to blend the communications tower and/or its accessory structures further into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.

b. Accessory structures shall be designed to be architecturally similar and compatible with each other and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

c. No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following: a sign of no greater than two square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone shall be posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the town and/or the Municipal Code.

6. Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.

7. Existing Vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this chapter prior to the approval of the special use permit use.

8. Screening.

a. Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas.

b. Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Town of Mesilla.

c. The applicant shall demonstrate to the approving Town of Mesilla that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners, and emergency power generators. Telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.

9. Lighting. Telecommunications towers shall not be lighted except where FAA/FCC required lighting of the telecommunications towers is necessary. No exterior lighting shall spill from the site in an unnecessary manner.

10. Access.

a. Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

b. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.

11. Parking. Parking shall be provided to assure adequate emergency and service access. The Town of Mesilla shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.

12. Fencing. The telecommunications tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the Town of Mesilla. The Town of Mesilla may waive this requirement if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

18.54.050 Co-location.

To minimize adverse visual impacts associated with the proliferation and clustering of towers, co-location or shared use of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such co-location is accomplished in a manner consistent with the following:

A. The antenna complies with all applicable FCC and FAA regulations.

B. A tower which is modified or reconstructed to accommodate the co-location of an additional antenna shall be of the same tower type as the existing tower, unless the PZHAC allows reconstruction as a monopole.

C. Height. An existing tower may be modified or rebuilt to a taller height not to exceed 30 feet over the tower’s existing height, to accommodate the co-location of an additional antenna. This height change may occur only one time per communication tower and the additional height cannot require an additional distance separation as set forth in MTC [18.54.070\(D\)](#). The tower’s premodification height shall be used to calculate such distance separations.

D. On-Site Location. A tower which is being rebuilt to accommodate the co-location of an additional antenna may be moved on-site within 50 feet of its existing location. If the tower is moved to accommodate co-location, only one tower may remain on the site. A relocated on-site tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to MTC [18.54.070\(D\)](#). [Ord. 2003-10 § 5]

18.54.060 Heights, placement provisions and setbacks.

A. Heights.

Zone	Towers	Other Communication Structures
HR, HC	Expressly prohibited	Prohibited

Towers and other communication structures are also expressly prohibited 1320 feet 1320 feet within 660 feet 660 feet (or 1/48 1/48 mile) of the boundary of an historic resource or district or view corridor.		
C	Expressly prohibited	Must be concealed as per subsection (D) of this section
R-1	Up to 65 feet For noncommercial use only	Up to 65 feet For noncommercial use only
RA	Up to 65 feet For noncommercial use only	Up to 65 feet For noncommercial use only
RF	Up to 65 feet for a single user Up to 75 feet for three users Up to 100 feet for four or more users	See MTC 18.54.030(B)

The applicant shall submit documentation justifying the total height of any tower or other communication structure, facility, and/or antenna and the basis therefore. Such documentation will be analyzed, to the extent practicable, in the context of the justification of the height needed to provide service primarily and essentially within the town boundaries and the immediately surrounding area, to the extent practicable.

No tower, including allowing for all attachments, shall exceed that height which shall permit operations without required artificial lighting of any kind in accordance with municipal, county, state and/or federal law, ordinance, code, rule or regulation.

Height restrictions.

1. **Small Wireless Facilities.** Personal wireless service facilities which meet the definition of a small wireless facility shall not exceed a maximum height of 60 feet above ground elevation in the public use, and residential single-family zones, and shall not exceed a maximum height of 45 feet within all other zoning zones.

2. **Non-small Wireless Facilities.** Personal wireless service facilities which do not meet the definition of a small wireless facility shall not exceed a maximum height of 75 feet above ground elevation in the public use in all zones.

~~B. The following placement and setback requirements shall apply to all freestanding vertical structures under 50 feet for which a special use permit is not required:~~

~~1. Towers and other freestanding vertical structures and satellite service devices in the R-1, RA and RF zones shall be placed within the primary buildable area for the lot's zone and must be to the side and/or rear of any and all residential dwelling structures, including houses, apartments, duplexes, etc.~~

~~2. Structures shall be set back from any adjoining property line one foot for each one foot in height plus 10 percent of the total height of the structure.~~

~~3. Additional setbacks may be required in both this section and in the following section to meet the distance equal to at least the potential fall radius of a support structure as certified by a licensed New Mexico professional engineer or to preserve the privacy and integrity of adjoining residential, public or historic properties.~~

~~4. Guy wires used to secure and steady a tower and accessory buildings shall conform to the minimum setback requirements for the lot's zone.~~

~~C. The following placement and setback requirements shall apply to all towers for which a special use permit is required:~~

~~1. Towers and other communication structures for which a special use permit is required shall be placed within the primary buildable area for the lot's zone and must be to the side and/or rear of the primary building structure. If the antenna, communication structure or satellite service device is the primary structure, then such structure shall be within the primary buildable area, including all equipment buildings.~~

~~2. Required tower or other antenna support setbacks from all property lines:~~

~~a. Up to 75 feet, the setback is one foot for each foot of height, plus 10 percent of the total height of the structure;~~

~~b. From 75 to 125 feet, the setback is two feet for each foot of height;~~

~~c. From 126 to 150 feet, the setback is three feet for each foot of height.~~

~~3. When a proposed tower will be located in or adjacent to a district which permits residential use, or where a residential structure is located, the tower shall also be set back from the nearest residential use on the same or any adjacent parcel, a distance 20 percent greater than its total height.~~

~~4. A special use permit shall be required for WTFs proposed to be constructed on lots adjacent to property zoned R-1 or RA.~~

~~D. Concealed wireless communications facilities are permitted within the C zone providing the following conditions are met:~~

~~1. The structure is architecturally integrated with existing buildings, structures and landscaping, including height, color, style, massing, placement, design and shape and is not readily visible as a wireless telecommunications facility. No setback shall be required for an architecturally integrated WTF less than 24 feet high.~~

~~2. The structure is located in areas where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.~~

~~3. The structure is located on existing vertical infrastructure, such as utility poles and public utility structures, if possible.~~

~~4. The structure complies with all other aesthetic requirements as set forth in this chapter.~~

~~5. The structure is approved through the special use permit process. [Ord. 2003-10 § 6]~~

Setback requirements.

A. Small Wireless Facilities.

1. The minimum setback from any residential dwelling or structure shall be 150 feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure.

2. Within all residentially zoned and other zones, all small wireless facilities shall be set back a minimum of 300 feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being collocated upon a pre-existing personal wireless service facility.

B. Cell Towers and All Personal Wireless Service Facilities That Do Not Meet the Definition of a Small Wireless Facility.

1. Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on site all icefall or debris from tower failure and preserve the privacy of any adjoining residential properties.

2. Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and

frontage requirements generally prevailing for the zoning zone where located, in the schedules of regulations for nonresidential and residential zones of this chapter, and such additional land if necessary to meet the setback requirements of this section.

3. Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of a distance equal to 110 percent of the height of the facility, for front yard setbacks, rear yard setbacks and side yard setbacks, in all zoning zones.

4. In addition to the above required setbacks from property lines, cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of 300 feet from any residential dwelling or structure in all zones.

18.54.070 Special use permits.

A. General. The following provisions shall govern the issuance of special use permits for the siting of a WTF, including but not limited to the construction of a tower and the placement of an antenna, by the board of trustees, the governing body of the town of Mesilla.

1. Applications for special use permits under this section shall be made to the Town of Mesilla, who shall initially determine whether or not the application is complete and/or free of defects upon receipt of the same.

2. If the town planning official determines that the application is defective or incomplete, they shall promptly mail a notice of incompleteness to the applicant, to toll the applicable shot clock, to ensure that the town is afforded sufficient time to review and determine each respective application.

3. The absence of any one of which listed herein below, shall render the respective application incomplete:

4. Wireless Communications Facilities SUP are for 5 years. Upon expiration, a renewal will be necessary and all current regulations must be met. SUP fees applicable according to fee schedule.

A. Special Use Permit and Site Plan Applications. Completed applications for a special use permit and site plan that shall identify all applicants, co-applicants, site developer(s), and wireless carrier(s) on whose behalf the application is being submitted, as well as the property owner of the proposed site.

B. Filing Fees. The appropriate filing fees then being charged by the town for special use permit applications and other related applications.

C. A "Notice Address." A "notice address," that being a specific address to which the town, Town of Mesilla, and/or town planning official may mail any type of notice, and that the mailing of same to such address shall constitute sufficient notice to any applicant, -, and/or their attorney, to comply with any requirement under this section as well as any local, state and/or federal law.

D. Proof of Authorization for Site Occupancy. Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, they shall submit proof of authorization to occupy the site at issue. If the applicant is leasing all or a portion of real property upon which it intends to install its new facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant is seeking to colocate new equipment into an existing facility, it shall provide a copy of its written colocation agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

E. A Drawn-to-Scale Depiction. The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the town planning official to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this chapter.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.

F. Site Plan. The applicant shall submit a site plan and site plan application. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

G. Engineer's Report. To the extent that an application proposes the colocation of new equipment onto an existing tower or facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.

H. Environmental Assessment Form. A completed environmental assessment form (EAF) and a completed visual EAF addendum.

I. Visual Impact Analysis. A completed visual impact analysis, which, at a minimum, shall include the following:

1. Small Wireless Facilities. For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

2. Telecommunications Towers and Personal Wireless Service Facilities Which Do Not Meet the Definition of a Small Wireless Facility. For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

- a. A "zone of visibility map" to determine locations from where the new facility will be seen.

- b. A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its base, guy wires, accessory structures, buildings, and overhead utility lines from abutting properties and streets.

J. Alternative Site Analysis. A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific wireless carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a special use permit.

If, and to the extent that, an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

1. An inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
2. A map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.

3. An outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.

4. A demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case.

K. FCC Compliance Report. An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility that the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible general population exposure limits, or alternatively, the occupational exposure limits, where applicable.

Such FCC compliance report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (1) whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the general population exposure limits or the occupational exposure limits. If the applicant and/or their engineer are asserting that the occupational exposure limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (2) the exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

L. FCC License. A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the town.

M. Effective Prohibition Claims. The town is aware that applicants seeking approvals for the installation of new wireless facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications. In doing so, they assert that their desired facility is “necessary” to remedy one or more significant gaps in a carrier’s personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The town is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly 10,000 miles through nine states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine states.

At the conclusion of such testing, the FCC staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2 percent accuracy to a maximum of 64.3 percent accuracy.

As a result, the FCC staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC staff’s 66-page report is made a part of this chapter by reference as Appendix 1. The town considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Town of Mesilla to render determinations upon applications for new wireless facilities consistent with both the requirements of this chapter and the statutory requirements of the TCA.

Consistent with same, if, at the time of filing an application under this chapter, an applicant intends to assert before the Town of Mesilla or the town that: (1) an identified wireless carrier suffers from a significant gap in its personal wireless services within the town, (2) that the applicant’s proposed installation is the least intrusive means of remedying such gap in services, and/or (3) that under the circumstances pertaining to the application, a denial of the application by the Town of Mesilla would constitute an “effective prohibition” under 47 U.S.C. § 332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled: “Notice of Effective Prohibition Conditions.”

If an applicant files a notice of effective prohibition conditions, then the applicant shall be required to submit probative evidence to enable the Town of Mesilla to reasonably determine: (1) whether or not the conditions alleged by the respective applicant exist, (2) whether there exists a significant gap or gaps in an identified wireless carrier’s personal wireless services within the town, (3) the geographic locations of any such gaps, and (4) the geographic boundaries of such gaps, to enable the Town of Mesilla to

determine whether granting the respective application would be consistent with the requirements of this chapter and the legislative intent behind same, and whether or not federal law would require the Town of Mesilla to grant the respective application, even if it would otherwise violate the town's Municipal Code, including, but not limited to, this chapter.

The additional materials which the applicant shall then be required to provide shall include the following:

1. Drive Test Data and Maps. If, and to the extent that, an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the town, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the town and the Town of Mesilla with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- a. The date and time for the test or tests;
- b. The location, in longitude and latitude, of each point at which signal strength was recorded; and
- c. Each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers;
- d. The applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three signal strength coverage maps reflecting actual signal strengths in three DBM bins, the first being at the alleged minimum signal strength, and two additional three DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of -95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier's coverage at -95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

2. Denial of Service and/or Dropped Call Records. If and to the extent that an applicant claims that a specific wireless carrier suffers from a capatown deficiency, or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the town, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier's customers were unable to initiate, maintain and conclude the use of the carrier's personal wireless services without actual loss of service, or interruption of service.

N. Estimate for Cost of Removal of Facility. A written estimate for the cost of the decommissioning, removal of the facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein.

O. Property Owner Consent and Liability Acknowledgment. A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners, both authorize the applicant to file and pursue its special use permit application and acknowledge the potential landowner's responsibility.

4. ~~2~~ Applications for special use permits under this section shall be subject to the procedures and requirements of the zoning regulations and standards, MTC [18.55.010](#), [18.85.080](#), [18.85.100](#); and Chapter [18.85](#) MTC, Article III; except as modified in this chapter, with the planning, zoning and historical appropriateness commission (PZHAC) acting as a recommending body and the board of trustees acting as the granting body.

5. ~~2~~ The PZHAC, in recommending a special use permit to the board of trustees, and the board of trustees, in granting a special use permit, may impose conditions and limitations to the extent the commission and board conclude such conditions and limitations are necessary to minimize any adverse effect of the proposed WTF on adjoining properties.

6. ~~3~~. Any engineering information submitted by the applicant, whether civil, mechanical, or electrical, shall be certified by a professional engineer licensed in the state of New Mexico.

7. ~~4~~. An applicant for a special use permit shall submit the information described below in this section and a nonrefundable filing fee as described in the zoning regulations and standards, MTC [18.85.140\(A\)](#).

P. ~~B~~. Wireless Telecommunications Facilities (WTFs) – Information Required. In addition to any information required for applications for special use permits pursuant to MTC [18.55.010](#) and Chapter [18.85](#) MTC, Article II, of the zoning regulations and standards, applicants for a special use permit for a WTF shall submit the following information:

1. A scaled site plan clearly indicating the location, type and height of the proposed tower; on-site land uses and zoning, adjacent land uses and zoning, including, when adjacent to the county or another municipality; adjacent roadways; proposed means of access; setbacks from property lines; elevation drawings of the proposed tower and any other structures; topography; parking and other information deemed by town staff to be necessary to assess compliance with this chapter.

2. Legal description of the property upon which or upon part of which the applicant proposed to located the WTF and a list of all mortgages on the property at the time of application.

3. The setback distance between the proposed tower and the nearest residential unit or the nearest platted or un-platted residentially zoned properties.

4. The separation distance from other existing towers within 1,000 feet of the proposed tower. The applicant shall also identify the type of construction of such existing tower(s) and their owner(s)/operator(s).

5. The landscape screening plan showing specific landscape materials.

6. Method of providing security, fencing or wall, and finished color and, if applicable, the method of camouflage and illumination.

7. A description of compliance with MTC [18.54.040](#)(E) to (H) and (K) to (R) and all applicable federal, state and local laws.

8. A notarized statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users.
9. Identification of the entities providing the network connections for the proposed tower and other cellular sites owned or operated by the applicant in the town of Mesilla.
10. A statement as to the projected number and locations of any WTFs proposed to be built in the town of Mesilla within two years of the date of the current application and that are part of the same system as the WTF for which a special use permit is currently being sought.
11. The applicant shall submit documentation of the legal right to install the WTF, including ingress and egress easements, and shall include original signature(s) of such land owner(s) and a copy of the property deed, plus a full copy of any proposed lease agreement with subject property owner(s).
12. A copy of the tax map and parcel identification code number of the subject property as shown in the records of the Dona Ana County assessor's office.
13. A site plan showing all property within 1,500 feet of the perimeter of the proposed property that will house the proposed WTF. A list of the owners of each of the affected properties and their mailing addresses as shown by the Dona Ana County assessor's office.
14. A copy of the FCC license for the WTF and a notarized statement from the owner or operator of the WTF attesting that the WTF complies with current FCC regulations.
15. Project comment review letter from the State of New Mexico Historic Preservation Division and any other letters of clearance required pursuant to the National Historic Preservation Act 1996, as amended.
16. Photo simulations and, if required, the photographic results of the site-located height model ~~or balloon test.~~
17. Propagation maps showing the cellular coverage that the site will provide.
18. A written report indicating the applicant's efforts to secure shared use or co-location with existing towers, other structures or alternative technology or

buildings within the town of Mesilla and neighboring areas within the town of Las Cruces and Dona Ana County. Copies of written requests and responses for shared use shall be provided to the PZHAC along with the application for a special use permit.

Q. ~~E.~~ Demonstration of Need. An applicant shall submit to the PZHAC documentation that demonstrates the need for the WTF to provide service within the geographical area proposed to be serviced by such WTF. The documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites.

R. ~~D.~~ Separation Distances. When a second tower is proposed near an existing tower, there shall be a minimum separation distance between them of not less than the combined height of the existing tower and the proposed tower, which distance shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan of the proposed tower. The same separation distance shall apply when more than one tower is proposed at one location.

S. ~~E.~~ Security Fencing. Towers shall be enclosed by a security fence or wall not less than six feet in height which is equipped with an appropriate anti-climbing device other than barbed or other cutting wire.

T. ~~F.~~ Screening. WTFs shall be landscaped with a buffer of plant material that effectively screens the view of the tower compound. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.

U. ~~G.~~ Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer. [Ord. 2003-10 § 7]

18.54.080 Buildings or other equipment storage.

The following requirements shall apply to the buildings and all other equipment storage space associated with a WTF requiring a special use permit:

A. The related unmanned equipment structure or cabinet, being part of the WTF, used in association with an antenna(s) located on a tower shall not contain more than 120 square feet of gross floor areas or be more than 10 feet in height and shall be located in accordance with the minimum yard requirements of the zone in which it is located.

B. Such equipment structures or cabinets shall comply with all applicable building codes.

C. Security lighting, if required, shall not exceed 12 feet in height and the location of the lighting fixture together with its cut-off angle shall be such that it does not shine directly on any public right-of-way or any residential premises. [Ord. 2003-10 § 8]

18.54.090

Application review and inspection fee.

A. Initial Review. Upon their acceptance of an application that appears to be complete, the town planning official shall transmit the application to the Town of Mesilla for initial review.

The Town of Mesilla shall then conduct an initial review to consider whether or not to establish itself as lead agency pursuant to NEPA and whether or not a use or area variance is required for the proposed application such that a referral for an application to the Town of Mesilla will be required to be made after the Town of Mesilla has declared itself to serve as lead agency and during the process of the planning Town of Mesilla considering a NEPA determination of environmental significance. That consideration of granting any required variances by the Town of Mesilla is done concurrently with the Town of Mesilla's review and consideration of special use permit and site plan approval.

The Town of Mesilla shall then conduct a public hearing upon each application, and render its determinations in accord with Sections 18.54.040 and shall ultimately determine whether or not to grant each applicant a special use permit and/or site plan approval.

An application review and engineering inspection fee of 15 percent of the total estimated cost of the installation of the tower and antenna(s) shall be paid by the applicant upon filing of an application for a special use permit with the town. This fee shall be deposited in an escrow account and it shall be used to reimburse the town for all reasonable costs of expert services for evaluation and consultation to the town in connection with the review of the application and the construction of the site once the WTF is permitted. In the event the amount held in escrow by the town is more than the amount of the actual invoicing for consultant and expert services for work performed through the date of issuance of a certificate of compliance for the project, the remaining balance shall be promptly refunded to the applicant. In the event the amount is less than the amount of actual invoicing, the town shall rely on MTC 18.85.140(B) of the zoning regulations and standards, which permits charging additional review fees. [Ord. 2003-10 § 9]

~~18.54.090~~ Application review and inspection; plus independent consultant/vendors/experts fees deposit, or Dona Ana County ESRI location system, which are contracted by the Town of Mesilla and amount determined by Town of Mesilla. Expenses are to be covered by applicant.

Application requirements.

Retention of consultants.

A. Use of Consultants. Where deemed reasonably necessary by the Town of Mesilla and/or the town, the Town of Mesilla and/or the town may retain the services of independent professional consultants to assist the Town of Mesilla in carrying out its duties in deciding special use permit applications for personal wireless service facilities. Where the Town of Mesilla uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications, or of issues raised during the course of review of applications for special use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the town for such services. In no event shall that responsibility be greater than the actual cost to the town of such engineering, legal, or other consulting services.

B. Advance Deposits for Consultant Costs. The town and/or Town of Mesilla may require advance periodic monetary deposits held by the town on account of the applicant or landowner to secure the reimbursement of the town's consultant expenses. The town council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. After audit and approval of itemized vouchers by the town comptroller as to reasonableness and necessity of the consultant charges, the town may make payments from the deposited funds for engineering, legal or consultant services. Upon receiving a request by the applicant or landowner, the town shall supply copies of such vouchers to the applicant and/or landowner reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between town officers or employees and the town's consultant. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the town to pay current or anticipated vouchers, the town shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the town council. Consultants shall undertake no review on any matter scheduled before the Town of Mesilla until the initial escrow deposit has been made or requested replenishment of the escrow deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements. This is in addition to 15% application fee.

C. Reasonable Limit Upon Consultant Expenses. A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing Town of Mesillas in connection with comparable applications for land use or development.

The town may also take into account any special conditions for considerations as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants, for a service which was rendered to assist the Town of Mesilla in: (1) making factual determinations consistent with the goals of protecting or promoting the health, safety or welfare of the town or its residents; (2) assessing potential adverse environmental impacts such as those identified within a SEPA process; (3) accessing potential adverse impacts to historic properties, structures and/or zones, and/or (4) assessing and determining factual issues relevant to effective prohibition claims, as addressed herein, to enable the Town of Mesilla to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

D. Audits Upon the Request of an Applicant. Upon request of the applicant or landowner, the town council shall review and audit all vouchers and determine whether such engineering, legal and consulting expenses are reasonable in amount and necessarily incurred by the town in connection with the review and consideration of a special use permit application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the town council on reasonable advance notice.

E. Liability for Consultant Expenses. For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the town. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the town for funds expended to compensate services rendered to the town under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the town for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No building permit or other permit shall be issued until reimbursement of costs and expenses determined by the town to be due. In the event of failure to reimburse the town for such fees, the following shall apply:

The town may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) in such actions shall be responsible for the reasonable and necessary attorney's fees expended by the town in prosecuting such action.

Alternatively, and at the sole discretion of the town, a default in reimbursement of such engineering, legal and consulting fees expended by the town shall be remedied by charging such sums against the real property that is the subject of the special use permit application, by adding that charge to and making it a part of the next annual real property tax assessment roll of the town. Such charges shall be levied and collected simultaneously and in the same manner as town-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the

owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the town council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

18.54.100

Performance security bond.

A. The applicant and the owner of record of any proposed WTF property site shall, at its cost and expense, be jointly required to execute and file with the town a bond or other form of security acceptable to the town as to type of security and the form and manner of execution, in the amount of at least \$75,000 to assure the faithful performance of the terms and conditions of this chapter and the conditions of any special use permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect through the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit. [Ord. 2003-10 § 10]

B. Bond Requirement. At or prior to the filing of an application for a special use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Town of Mesilla's engineer shall review this estimate.

Upon receiving a special use permit approval from the Town of Mesilla, and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the town a bond for a length of no less than three years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within 30 days of the approval date and before any installation or construction begins.

Replacement bonds must be provided 90 days prior to the expiration of any previous bond.

At any time the town has good cause to question the sufficiency of the bond at the end of any three-year period, the owner and/or operator of the facility, upon request by the town, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for removal of the facility at the owner's expense. A separate bond will be required for each facility, regardless of the number of owners or the location.

18.54.110 Liability insurance.

A. A holder of a special use permit for a WTF shall secure and at all times maintain public liability insurance for personal injuries, death and property damage and umbrella insurance coverage for the duration of the special use permit in the following amounts:

1. Commercial general liability covering personal injuries, death and property damage and automobile coverage each at \$1,000,000 per occurrence and \$2,000,000 aggregate and the commercial liability policy shall specifically include the town as an additional named insured.
2. Workers' compensation at not less than minimum statutory limits.

B. The insurance policies shall be issued by an insurance agent of an insurance company licensed to do business in the state of New Mexico with a Best's rating of at least A and shall contain an endorsement obligating the insurance company to furnish the town with at least 30 days prior written notice in advance of the cancellation of the insurance. Renewal or replacement policies or certificates shall be delivered to the town at least 15 days before the expiration of the insurance that the policies are to renew or replace.

C. The holder of a special use permit for a WTF shall deliver to the town a copy of each of the policies or certificates representing the insurance in the required amounts before construction of the permitted WTF is initiated. [Ord. 2003-10 § 11]

18.54.120 Indemnification.

Any application for a WTF that is proposed for town property pursuant to this chapter shall contain an indemnification provision. Such indemnification provision shall require the applicant, to the extent permitted by the law, to at all times indemnify and hold harmless the town of Mesilla from and against all claims, liabilities, damages, losses and expenses, including attorneys' fees, which might arise out of or be caused by the performance of work in the location, construction, modification, use, maintenance, repair, replacement or removal of the WTF, which causes contract bodily injury, illness or death or any other injury or for property damage caused by the negligent act or omission of the owner/operator/applicant of the WTF. [Ord. 2003-10 § 12]

18.54.130 Removal of a wireless telecommunications facility.

A. Under the following circumstances, the town may determine that the health, welfare and safety of the town residents warrant and require the removal of a WTF:

1. A permitted WTF has not been operated as a WTF for a continuous period of six months and is therefore considered to have been abandoned;
2. A permitted WTF falls into such a state of disrepair that it creates a health or safety hazard as determined by town staff;
3. A WTF has been located, constructed or modified without first obtaining, or in a manner not authorized by, the required special use permit.

B. If the town makes such a determination as appears in subsection (A) of this section, then the town shall provide the owner of such WTF with a notice of abandonment and an order to remove the same within 90 days of receipt of the notice of abandonment from the town.

C. Failure by the owner or his successors or assigns to remove the abandoned WTF and all associated structures and facilities from the site and to restore the site to as close to its original conditions as is possible or to take substantial steps toward removing the abandoned WTF within said 90 days shall be grounds to remove the WTF at the owner's expense. [Ord. 2003-10 § 13]

D. **Removal of Abandoned Facilities.** Any personal wireless service facility that is not operated or used for a continuous period of 6 consecutive months shall be considered abandoned. At the owner's expense, the owner of said facility shall be required to remove the facility and all associated equipment buildings, power supply, fence, and other items associated with such facility, compound and/or complex, and permitted with, the facility.

If the facility is not removed within 90 days, the bond secured by the facility owner shall be used to remove the facility and any accessory equipment and structures.

18.54.140 Required annual report.

In conjunction with the annual renewal of their business registration, the owner of each WTF shall submit a report to the Town of Mesilla, Town Clerk, PO Box 10, Mesilla, NM 88046, stating the current user status of the tower and providing proof of renewal of the insurance policies or certificates required pursuant to MTC [18.54.110](#). [Ord. 2003-10 § 14]

18.54.150 Provision for waiver or variance.

A. An administrative waiver of up to a 10 percent difference, except for height, or a variance for over a 10 percent difference, except for height, may be requested by the applicant at the time of filing for the special use permit. The conditions regulating the process for waiver and variance requests are set forth in Chapter [18.85](#) MTC, Article I, and shall apply in this chapter.

B. In instances where strict compliance with this chapter would result in a violation of a clearly established, applicable provision of the Telecommunications Act of 1996 or other federal law or regulation, a minimal easing of the provision of this chapter may be granted by the board of adjustment to the extent required to comply with such law. [Ord. 2003-10 § 15]

18.54.160 Penalty.

Any person who violates any provision of this chapter or any special use permit issued pursuant to this chapter shall be charged with a petty misdemeanor and upon conviction may be punished by a fine of not more than \$500.00 or imprisonment for not more than 90 days or both such fine and imprisonment as provided for in MTC Title [1](#). [Ord. 2003-10 § 16]

18.54.170 Default and/or revocation.

A. If a WTF is repaired, rebuilt, placed, moved or modified in a way that is inconsistent or not in compliance with the provisions of this chapter or of the special use permit, then the town shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation(s) or noncompliance and that action to begin correction of the violation(s) must be commenced within seven days of the date of the postmark or personal service of the notice, whichever is earlier, and completed within 45 days of such date. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes or presents an imminent danger to the health or safety of lives or property, the town may, at its sole discretion, order the violation remedied within 24 hours.

B. If within the 45-day time period set forth in subsection (A) of this section, the WTF is not brought into compliance with the provisions of this chapter or of the special use permit, or substantial steps are not taken in order to bring the affected WTF into compliance, then the town may revoke such special use permit for the affected WTF and shall notify the holder of the special use permit within 48 hours of such action. [Ord. 2003-10 § 17]

18.54.180 Eleventh hour submissions.

In the event that an applicant tenders eleventh hour submissions to the town and/or the Town of Mesilla in the form of (1) expert reports, (2) expert materials, and/or (3) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Town of Mesilla at such late point in the proceedings, the Town of Mesilla shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Town of Mesilla shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Town of Mesilla, even if such review or services extend beyond the applicable shot clock period, so long as the Town of Mesilla completes such review and retains and secures such expert

services within a reasonable period of time thereafter, and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

18.54.190 Prohibition against illegally excessive emissions and RF radiation testing.

In accord with the same, the town enacts the following RF radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF radiation as defined in Section 18.54.020, or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR 1.1310(e)(1), Table 1, Sections (i) and (ii), as made applicable pursuant to 47 CFR 1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the town, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the town by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special use permit or other zoning approval granted by the Town of Mesilla or any other Town of Mesilla or representative of the town is subject to modification or revocation by the Town of Mesilla following a public hearing.

A. Initial Certification of Compliance With Applicable RF Radiation Limits. Within 45 days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each telecommunications antenna shall submit to the town planning official a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's RF emissions comply with the limits codified within 47 CFR 1.1310(e)(1), Table 1, Sections (i) and (ii), as made applicable pursuant to 47 CFR 1.1310(e)(3).

The engineer shall measure the emissions of the approved facility, including the cumulative impact from other nearby facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's maximum permissible exposure (MPE) limits shall be submitted to the town planning official.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The town may require, at the applicant's expense, independent verification of the results of the analysis.

B. Random RF Radiofrequency Testing. At the operator's expense, the town may retain an engineer to conduct random unannounced RF radiation testing of such facilities to ensure the facility's compliance with the limits codified within 47 CFR 1.1310(e)(1) et seq.

The town may cause such random testing to be conducted as often as the town may deem appropriate. However, the town may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR 1.1310(e)(1) et seq., in which case the town shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

The engineer conducting any such testing shall measure the emissions from such facilities, including, but not limited to, the emissions from any individual facility as well as the cumulative emissions from multiple transmitters/facilities which are placed upon the same supporting structure or nearby structures to ascertain whether or not such facility or facilities are individually or cumulatively exposing members of the general public to emissions which exceed the permissible general population exposure limits, or occupational exposure limited, which have been set and/or approved by the FCC.

If the town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR 1.1310(e)(1) et seq., then a hearing shall be scheduled before the Town of Mesilla at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two weeks' written notice by first-class mail to its notice address.

At such hearing, the burden shall be on the town to show that, by a preponderance of the evidence, the facilities' emissions exceeded the permissible limits under 47 CFR 1.1310(e)(1) et seq.

In the event that the town establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Town of Mesilla shall have the power to, and shall revoke any special use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Town of Mesilla, town planning official and/or any other representative of the town may have then issued to the owner and/or operator, for the respective facility.

In addition, the Town of Mesilla shall impose a fine of not less than \$10,000, nor more than \$15,000 for such violation of subsection (A) of this section, or, in the case of a second offense within less than five years, a minimum fine of \$20,000, nor more than \$30,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subsection (A) of this section, three or more times within any five-year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR 1.1310(e)(1) et seq., the Town of Mesilla shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the town for a period of five years.

18.54.200 Factual determinations to be rendered by the Town of Mesilla.

A. Evidentiary Standards. In determining special use permit applications for personal wireless service facilities, the Town of Mesilla shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Town of Mesilla to make each of the factual determinations enumerated below.

Common examples of the types of evidence which the Town of Mesilla may require an applicant to produce are the following:

1. Where an applicant is not the owner of the real property upon which it proposes to install a new wireless facility, the Town of Mesilla can require the applicant to provide a copy of the applicant's lease with the property owner (including any schedules, property descriptions, appendices or other attachments), from which the applicant may censor or delete any financial terms which would be irrelevant to the factual issues which the Town of Mesilla is required to determine;

2. Where the Town of Mesilla deems it appropriate, the Town of Mesilla can require the applicant to perform what is commonly known as a “height model test” and to require the applicant to publish reasonably sufficient advance public notice of same, to enable the Town of Mesilla, property owners, and the community, an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community;

3. Where the applicant asserts a claim that a proposed facility is necessary to remedy one or more existing significant gaps in an identified wireless carrier’s personal wireless services, the Town of Mesilla may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three DBM each, to enable the Town of Mesilla to assess the existence of such significant gaps accurately, and/or whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application;

4. Where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the Town of Mesilla may require the applicant to provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

The Town of Mesilla shall have sole discretion to determine, among other things, the relevance of any evidence presented, the probative value of any evidence presented, the credibility of any testimony provided, whether expert or otherwise, and the adequacy of any evidence presented.

The Town of Mesilla shall not be required to accept, at face value, any unsupported factual claims asserted by an applicant but may require the production of evidence reasonably necessary to enable the Town of Mesilla to determine the accuracy of any factual allegations asserted by each respective applicant.

Conclusory factual assertions by an applicant shall not be accepted as evidence by the Town of Mesilla.

B. Factual Determinations. To decide applications for special use permits under this section, the Town of Mesilla shall render factual determinations, which shall include two specific types of factual determinations, as applicable.

First, the Town of Mesilla shall render local zoning determinations according to subsection (B)(1) of this section.

Then, if, and only if, an applicant asserts claims that: (1) its proposed wireless facility or installation is necessary to remedy a significant gap in personal wireless services for an explicitly identified wireless carrier, and (2) that its proposed installation is the least intrusive means of remedying a specifically identified significant gap or gaps, the Town of Mesilla shall additionally render TCA determinations, in accord with subsection (B)(2) of this section.

The Town of Mesilla shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence based upon which it rendered each of its factual determinations.

Each factual determination made by the Town of Mesilla shall be based upon substantial evidence.

For purposes of this provision, “substantial evidence” shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence which the Town of Mesilla may consider shall include any evidence submitted in support of an application, and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form, or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Town of Mesilla may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess, and any documents, records or other evidence which is a matter of public record, irrespective of whether such public record is a record of the town, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to inure to the benefit of the town, its residents, and property owners, and not applicants.

If, and to the extent that, the Town of Mesilla fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Town of Mesilla.

1. Local Zoning Determinations. The Town of Mesilla shall make the following factual determinations as to whether the application meets the requirements for granting a special use permit under this chapter:

a. Compliance With Chapter 18.36. Whether the proposed installation will meet each of the conditions and standards set forth within Chapter 18.36 in the absence of which the Town of Mesilla is not authorized to grant a special use permit.

b. Potential Adverse Aesthetic Impacts. Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties that are located adjacent to, or in close proximity to, the proposed site, or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

c. Potential Adverse Impacts Upon Real Estate Values. Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to, the proposed site, or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

d. Potential Adverse Impact Upon the Character of the Surrounding Community. Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to, or in close proximity to, the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

e. Potential Adverse Impacts Upon Historic Properties or Historic Districts, HR and HC zones. Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including but not limited to historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

f. Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of the Town. Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the town including, but not limited to, scenic areas and/or scenic ridgelines, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the town.

g. Sufficient Fall Zones. Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icfall, debris fall, and fire.

h. Most Preferred Site on Hierarchy. Whether the site chosen by the applicant for its proposed facility is situated in the most preferred district within the hierarchy of preferred districts set forth within Section 18.23.220, and whether the applicant has established before the Town of

Mesilla that it is not feasible for the applicant's proposed new facility to be siting in a more preferred district listed within such section.

i. Mitigation. Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If when applying the evidentiary standards set forth in subsection (B)(1) of this section, the Town of Mesilla determines that the proposed facility would not meet the standards set forth within Chapter 18.36, or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the town and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Town of Mesilla shall deny the respective application for a special use permit unless the Town of Mesilla additionally finds that a denial of the application would constitute an effective prohibition, as provided for in subsections (B)(2) and (3) of this section.

2. TCA Determinations. In cases within which an applicant has filed a "notice of effective prohibition conditions," the Town of Mesilla shall make three additional factual determinations, as listed herein below:

a. Adequate Personal Wireless Services Coverage. Whether the specific wireless carrier has adequate personal wireless services coverage within the geographic areas for which the applicant claims a significant gap exists in such coverage.

b. Significant Gap in Personal Wireless Services of an Identified Carrier. Whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific wireless carrier suffers from a significant gap in its personal wireless services within the town.

In rendering such determination, the Town of Mesilla shall consider factors including, but not necessarily limited to: (1) whether the identified wireless carrier which is alleged to suffer from any significant gap in their personal wireless services has adequate service in its personal wireless services at any frequency being used by the carrier to provide personal wireless services to its end-use customers, (2) whether any such alleged gap is relatively large or small in geographic size, (3) whether the number of the carrier's customers affected by the gap is relatively small or large, (4) whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or (5) overall, whether the gap is relatively insignificant or otherwise relatively de minimis.

A significant gap cannot be established simply because the carrier's customers are currently using the carrier's personal wireless services, but the frequency at which the customers are using such services is not the frequency most desired by the carrier.

c. Least Intrusive Means of Remedying Gap(s) in Service. Whether the applicant has established based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility, at the specific site proposed by the applicant, and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proved to exist as determined by the Town of Mesilla based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Town of Mesilla shall consider factors including, but not necessarily limited to: (1) whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for colocation, (2) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation, (3) whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service, (4) whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas, (5) whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of stealth design, screening, use of color, noise mitigation measures, etc., and/or (6) overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations, such as the installation of multiple shorter installations, instead of a single microcell facility.

3. Finding of Effective Prohibition or Lack of Effective Prohibition. If when applying the evidentiary standards set forth in subsection (B)(1) of this section, the Town of Mesilla affirmatively determines that the applicant has failed to establish either: (a) that an identified wireless carrier suffers from a significant gap(s) in its personal wireless services within the town, and/or (b) that the applicant has failed to establish that the proposed installation is the least intrusive means of remedying any such gap or gaps, then the Town of Mesilla may deny the application pursuant to subsection (B)(2) of this section, and such denial shall not constitute an "effective prohibition."

If when applying the evidentiary standards set forth in subsection (B)(1) of this section, the Town of Mesilla affirmatively determines that the applicant has established both: (a) that an identified wireless carrier suffers from a significant gap in personal wireless services within the town, and (b) that the proposed installation is the least intrusive means of remedying such significant gap or gaps, then the Town of Mesilla shall grant the application, irrespective of any determinations the Town of Mesilla may make pursuant to subsection (B)(2) of this section, because any such denial would constitute an "effective prohibition."

The Mesilla Town Code is current through Ordinance 2021-03, passed December 30, 2021.

Disclaimer: The town clerk's office has the official version of the Mesilla Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

Town Website: <http://www.mesillanm.gov/> Town Telephone: (575) 524-3262
Codification services provided by [General Code](#)

18.54.210 General provisions.

A. Balancing of Interests. The town formally recognizes that, as has been interpreted by federal courts, when it enacted the TCA, Congress chose to preserve local zoning authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. § 332(c)(7)(A)) subject only to the limitations set forth in 47 U.S.C. § 332(c)(7)(b), consistent with the holding of the United States Court of Appeals in *Sprint Spectrum L.P. v. Willoth*, 176 F3d 630 (2nd Cir., 1999), *Sprint Telephony PCS LP v. Town of San Diego*, 543 F3d 571 (9th Cir., 2008); *T-Mobile U.S.A. Inc. v. Town of Anacortes*, 572 F3d 987 (9th Cir., 2009), and their progeny, and the town has relied upon such federal courts' interpretations of the TCA in enacting this chapter.

The town similarly embraces the federal courts' determinations that the TCA was created to effectuate a balancing between the interests of facilitating the growth of wireless telephone service nationally and maintaining local control over the siting of wireless personal services facilities, as the court additionally articulated in *Omnipoint Communications Inc. v. The Town of White Plains*, 430 F3d. 529 (2nd Cir., 2005). This includes preserving to local governments, including the town, the power to deny applications for the installation of wireless personal services facilities, based upon traditional grounds of zoning denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community.

This additionally includes the recognition that, under this balancing of interest test, "once an area is sufficiently serviced by a wireless service provider, the right to deny applications (for new wireless facilities) becomes broader," *Crown Castle NG East LLC v. The Town of Hempstead*, 2018 WL 6605857.

It is the intent of the town that this chapter be applied in a manner consistent with the balancing of interests codified within the TCA.

Consistent with same, the town rejects and shall reject any current and/or future FCC interpretations of any provision of the TCA which are clearly inconsistent with, and/or are clearly contrary to, both the language of the TCA and binding decisions of the United States Court of Appeals.

This includes a rejection of any FCC interpretations inconsistent with Willoth and any claims that the FCA legally prohibits the Town of Mesilla from denying a special use permit application, based solely upon a claim that an applicant desires the installation of its new facility for “densification” of its existing personal wireless services, or to offer a new service, irrespective of whether or not the carrier already possesses adequate coverage within the town, and irrespective of the potential adverse impact which the installation of such new facility or facilities would inflict upon the town, its property owners, citizens and/or communities.

B. Conflict With Federal or State Laws. To the extent that any provision of this chapter is found to conflict with any applicable federal or state law, it is the intent of the town that the remaining portion of this chapter which has not been found to conflict with such law be deemed to remain valid and in full force and effect.

18.54.220 Shot clock periods.

To comply with the requirements of 47 U.S.C. § 332(c)(7)(B)(ii) of the TCA, the following shot clock periods set forth herein below shall be presumed to be reasonable periods within which the Town of Mesilla shall render determinations upon special use permit applications for personal wireless service facilities.

The Town of Mesilla shall render determinations upon such applications within the periods set forth herein below, unless the applicable shot clock period list below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Town of Mesilla and/or town’s control.

18.54.230 Shot clock tolls, extensions and reasonable delay periods.

Consistent with the letter and intent of 47 U.S.C. § 332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within Section shall generally be presumed to be sufficient periods within which the Town of Mesilla shall render decisions upon special use permit applications.

Notwithstanding same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Town of Mesilla, and the

Town of Mesilla shall not be required to render its determination within the shot clock period presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

A. Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error. In the event that the town planning official deems an application incomplete, the town planning official shall send a notice of incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Town of Mesilla mails a notice of incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Town of Mesilla is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the town receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically resume running, but shall not be deemed to start running anew.

The applicable shot clock period shall, once again, be tolled if the town planning official thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the town, from the applicant, up to that point.

B. Shot Clock Extension by Mutual Agreement. The Town of Mesilla, in its sole discretion, shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Town of Mesilla shall include the Town of Mesilla's authority to request, at any time and, for any period of time, the Town of Mesilla may deem reasonable or appropriate under the circumstances, consent from a respective applicant, to extend the applicable shot clock period, to enable the Town of Mesilla, the applicant, or any relevant third party, to complete any type of undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Town of Mesilla, to the extent that any such undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law, and/or the requirements of any provision of the Municipal Code, including but not limited to this chapter.

In response to any request by the Town of Mesilla, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative can consent to any extension of any applicable shot clock, by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Town of Mesilla shall be permitted to reasonably rely upon a representative of the applicant

indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Town of Mesilla within the hearing process.

C. Reasonable Delay Extensions of Shot Clock Periods. The town recognizes that there may be situations wherein, due to circumstances beyond the control of the town and/or the Town of Mesilla, the review and issuance of a final decision upon a special use permit application for a personal wireless facility cannot reasonably be completed within the application shot clock periods delineated within Section 18.23.040.

If, despite the exercise of due diligence by the town and the Town of Mesilla, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Town of Mesilla shall be permitted to continue and complete its review, and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.



TOWN OF MESILLA

Public Works Department
P.O. Box 10, Mesilla, New Mexico 88046
Office: (575) 524-3262
Fax: (575) 541-6327

MEMORANDUM

Date: December 4 , 2025
TO: Mayor Hernandez and Board of Trustees
FROM: Lorenzo Astorga , Public Works Director
RE: **Public Works Department Activity Report – November
2025**

On-going maintenance, custodial and operations:

Meter reading continues
On-call/standby for emergency repairs or assistance
Monthly water sampling and reporting is up-to-date
Monitoring of water tank, wells, and pumps
Monitoring of lift stations, review and reporting
New water services and water shut-offs (ownership change/nonpayment)
Grounds maintenance on-going
Utility location services
Custodial responsibilities on-going
Vehicle maintenance on-going
Valve exercise program continues
Trail Maintenance on-going

Miscellaneous items/work orders/accomplishments:

Set up and tear down for Veterans Day Event (November 11)
Assisted in Trash clean up and cleaning of restrooms For Dia de Los Muertos weekend
Filled in Asphalt patch on Locations of new water services: (Calle de Santa Ana , Calle Collon)
Building Filter Were replaced and ready for Heaters to go on for season
Clean up and trash removal
Filled in Several Potholes Called in by Residents.



***Community & Economic Development
Department***

P.O. Box 10, Mesilla, NM 88046
Phone: (575) 524-3262 ext. 104
Fax (575) 541-6327
E-mail: mesillaced@mesillanm.gov

MEMORANDUM

TO: MAYOR HERNANDEZ
**FROM: EDDIE SALAZAR – COMMUNITY & ECONOMIC
DEVELOPMENT DEPT**
SUBJECT: ACTIVITY REPORT – NOVEMBER 2025
DATE: DECEMBER 3, 2025

Registered Business(es):

1423 – FANCY PONY BOUTIQUE: RETAIL
1424 – ANIMOCREATE: SP EVENT
1425 - PAPA’S SMOKED BBQ: SP EVENT
1429 – TCMB DESIGN: SP EVENT
1430 – DEADBOY BY EDDIE MARQUEZ: SP EVENT
1431 – TRIPLE R SEPTIC – CONTRACTOR
1434 - ACAI WITH ME – SP EVENT
1436 - NUCHUCO ART – SP EVENT
1438 – DREADFUL THINGS – SP EVENT
1439 - BISCOCHOS BY LALA - SP EVENT
1440 – PRELO – SP EVENT
1441 – GREEN MOUNTAIN CONTRACTORS – CONTRACTOR
1442 - BAKEHOUSE BY TRAPOOTED - MERCADO

Zoning/Sign Permit(s):

PZHAC CASE #062067 – 2185 Calle de Guadalupe, submitted by Richard Moreno. Requesting approval to construct an accessory building on the property. ZONE: Historical Residential (HR).

PZHAC CASE #062068 – 1901 Calle Pacana, submitted by EMG Construction. Requesting approval to erect a rock wall. ZONE: Historical Residential (HR).

PZHAC CASE #062071 – 2319 Calle de Guadalupe, submitted by The Fancy Pony Beauty & Boutique. Requesting approval install a projecting sign. . ZONE: Historical Commercial (HC).

PZHAC CASE #062072 – 2319 Calle de Guadalupe, submitted by The Fancy Pony Beauty & Boutique. Requesting approval install a wall sign. . ZONE: Historical Commercial (HC).

ADMINISTRATIVE APPROVED

CASE #062069 – 2190 Snow Rd, submitted by Orden de Agustin Recoletos Provincia de San

Nicolas, requesting approval to replace leaky septic tank mandated by Environmental Dept. ZONE: Rural Farm (RF).

PZHAC CASE #062070 – 2836 Valle Grande, submitted by Dustin Jones. Requesting approval to relocate his PV solar system from an old address to his new residence. ZONE: Rural Farm (RF).

CASE #062073 – 2260 Calle de Santiago, submitted by Bill and Janice Cook. Requesting approval to move and restore front sign. ZONE: Historical Residential (HR).

CASE# 062074 – 2215 Calle de Guadalupe, submitted by John Rawlings. Requesting approval to allow Green Mountain Contractors to recoat his roof. ZONE: Historic Commercial (HC).

SIGN CASE #062076 –2470 Calle de Guadalupe, C. Submitted by Kalyn Hazen. Applicant is looking to put up two signs for her potential new business, Just Peachy Double Wide Designs. ZONE: Historical Commercial (C).

SPECIAL USE PERMIT(s)

N/A

VARIANCE(s)

N/A

REZONE(s)

N/A

Projects

NOVEMBER 2025 ASSESSOR'S REPORT							
PERMIT	ISSUEE	ADDRESS	DAC ACCOUNT #	BLDG CODE	EVAL COST	FEE	DESCRIPTION
062067	RICHARD MORENO	2185 CALLE DE GUADALUPE	R0400287	AC	\$80,000	\$1247	ACCESSORY STRUCTURE/CASITA
062068	EMG CONSTRUCTION	1901 CALLE PACANA	R0401593	MI	\$10,450	\$187	ROCK WALL
062069	ORDEN DE AGUSTIN RECOLETOS	2190 SNOW RD	R0400087	MI	\$66,562	\$1,031	REPLACE DAMAGED SEPTIC TANK
062070	DUSTIN JONES	2836 VALLE GRAN DE	R0400956	MI	\$3,000	\$95	RELOCATION OF SOLAR PANELS FROM PREVIOUS LOCATION
062071	THE FANCY PONY BEAUTY & BOUTIQUE	2319 CALLE DE GUADALUPE	R0400318	SIGN	N/A	\$66	OUTSIDE SIGNAGE FOR NEW BUSINESS
062072	THE FANCY PONY BEAUTY & BOUTIQUE	2319 CALLE DE GUADALUPE	R0400318	SIGN	N/A	\$66	SECONDARY SIGN FOR NEW BUSINESS
062073	BILL AND JANICE COOK	2260 CALLE DE SANTIAGO	R0401274	SIGN	N/A	\$50	MOVE BUSINESS FREE STANDING SIGH
062074	JOHN RAWLINGS	2215 CALLE DE GUADALUPE	R0401307	RRC	\$9,931	\$175.50	RECOAT ROOF
062075	TAYLOR FAMILY TRUST	2641 CALLE DE GUADALUPE	R0400375	RN	\$25,000	\$348	RENOVATIONS
062076	KALYN HAZEN	2470 CALLE DE GUADALUPE	R0401208	SIGN	N/A	\$10	SIGN FOR NEW BUSINESS

Leave pick up all Areas
Major weed eradication on Calle del Norte Trail

Emergency line repair (Calle De Oeste)

Fountain maintenance
Flushed Mercado district

Project update:

Calle Del Norte Multi-use Path Phase 3 (FY2024 TPF) – this project has begun and is about 40 % complete. Cement pipe has been put in and cement base is being put in and wall is being erected.