

RESOLUTION NO. 2021-20

**A RESOLUTION APPROVING THE MEDIATION SETTLEMENT AGREEMENT IN DOCKET NO. D-202-CV-2018-08036, CITY OF ALBUQUERQUE, ET AL V. STEPHANIE SCHARDIN CLARKE AND NEW MEXICO TAXATION AND REVENUE DEPARTMENT, IN THE SECOND JUDICIAL DISTRICT COURT OF NEW MEXICO (The “LAWSUIT”),
and
AUTHORIZING THE TOWN MANAGER TO EXECUTE ALL DOCUMENTS ON BEHALF OF THE TOWN TO IMPLEMENT AND CONCLUDE THE SETTLEMENT AGREEMENT, INCLUDING: 1) APPROVAL OF THE MEDIATION SETTLEMENT AGREEMENT, SETTLEMENT AMOUNT AND CONTINGENCY FEE, AND 2) THE RELEASE.**

WHEREAS, on approximately November 5, 2018 the Lawsuit was initiated against the New Mexico Taxation and Revenue Department (“TRD”) by various local governmental entities, which eventually included forty-four (44) local governmental entities as plaintiffs including the Town of Silver City; and

WHEREAS, in the Lawsuit the plaintiffs alleged that TRD had miscalculated in making reductions in the distributions of gross receipt taxes to local governmental entities (NMSA 1978, § 7-1-6.15) for the years of approximately 2010 through 2017; and

WHEREAS, TRD asserted various defenses in opposition to plaintiffs’ allegations; and

WHEREAS, beginning April 28, 2021 the parties entered into mediation with Court of Appeals Judge Michael Bustamante as mediator, and the parties continued to mediate and negotiate throughout the Summer of 2021; and

WHEREAS, the parties have now agreed to a settlement of the Lawsuit in which TRD shall pay the plaintiffs a total sum of \$50,000,000.00 (Fifty Million Dollars) with the town’s share being a gross recovery of \$127,643.87 and net recovery, after subtracting taxes and contingency fee, of \$113,802.48; and

WHEREAS, in return for the payment of the amount specified herein by TRD, the plaintiffs shall release TRD from any claims plaintiffs have brought or could have brought against TRD in the Lawsuit through the date of May 31, 2021; and

WHEREAS, the plaintiffs, and the town’s staff and attorney, believe that the settlement is fair and reasonable considering the uncertainties in litigating the claims, the defenses asserted by TRD, and the time and expense involved in protracted and complex litigation; and

WHEREAS, the Town Council is satisfied with the recommendations of the town’s staff and attorney and finds that the settlement is fair and reasonable and in the best interest of the town and its inhabitants to accept the settlement.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF SILVER CITY, NEW MEXICO that:

1. The Town Council of Silver City hereby formally approves the Mediation Settlement Agreement in Docket No. D-202-CV-2018-08036, City of Albuquerque, et al v. Stephanie Schardin Clarke and New Mexico Taxation and Revenue Department, in the Second Judicial District Court of New Mexico.

2. The Town Council of Silver City hereby authorizes the Town Manager to execute all documents on the town's behalf to implement and conclude the settlement agreement, including the Approval of Mediation Settlement Agreement, Settlement Amount and Contingent Fee, and the Release.

PASSED, APPROVED and ADOPTED by the governing body of the Town of Silver City, Grant County, New Mexico, at its regular meeting of September 14, 2021.

(Seal)

TOWN OF SILVER CITY

Approved:

Ken Ladner, Mayor

Attest:

Maria C. Sublasky, Acting Town Clerk